

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
Commonwealth Edison Company,)
) No. 05-0597
Proposed general increase in)
rates for delivery service)
(tariffs filed on August 31,)
2005.).)

Chicago, Illinois
March 21st, 2006

Met pursuant to notice at 9:30 a.m.

BEFORE :

MR. GLENNON DOLAN and MS. KATINA HALOULOS,
Administrative Law Judges.

APPEARANCES :

MR. RICHARD G. BERNET
MS. ANASTASIA POLEK-O'BRIEN
10 South Dearborn Street, Suite 3500
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appearing for Com Ed;

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208 South LaSalle Street, Suite 1760
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appearing for CUB;

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4 Energy, Inc.;

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9 GIORDANO and NEELAND
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12 appearing for Building Owners and
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MS. CARLA SCARSELLA
14 MR. JOHN FEELEY
MR. CARMEN FOSCO
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18 MR. CHRISTOPHER J. TOWNSEND
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7 MR. BARRY HUDDLESTON
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9 appearing for Dynegy, Inc.;

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11 MR. ERIC ROBERTSON
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12 appearing for IIEC;

13 MR. CONRAD E. REDDICK
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15 SONNENSCHNEN, NATH and ROSENTHAL
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20 appearing for CTA;

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4 Washington, DC 20585
5 appearing for U.S. Department of Energy;

6 MR. RONALD JOLLY
7 MR. J. MARK POWELL
8 30 North LaSalle Street, Suite 900
9 Chicago, Illinois 60602
10 appearing for the City of Chicago;

11 MR. MARK KAMINSKI
12 MR. RISHI GARG
13 100 West Randolph Street
14 Chicago, Illinois 60601
15 appearing for People of the State of
16 Illinois;

17 MR. DARRYL BRADFORD
18 One Financial Plaza
19 440 South LaSalle Street, Suite 3300
20 Chicago, Illinois 60605
21 appearing for Com Ed.

22 SULLIVAN REPORTING COMPANY, by
Barbara A. Perkovich, CSR
Jennifer JL. Velasco, CSR
Francisco Castaneda, CSR

1		<u>I</u>	<u>N</u>	<u>D</u>	<u>E</u>	<u>X</u>			
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>		<u>Re-</u>	<u>Re-</u>	<u>By</u>		
	Frank Clark	148	151		<u>direct</u>	<u>cross</u>	<u>Examiner</u>		
3			155						
4			162						
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5	JOHN T. CASTELLO	229	207		225	227			
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8	MICHAEL McGAEREY, SR	287	247		280	284	285		
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2	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
	Com Ed		
3	#1	151	151
	#1.1	151	151
4	#1.2	151	151
	#1.3	151	151
5	AG Cross		
	#1	155	155
6	BOMA Cross		
	#1	166	178
7	#2	185	185
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8	Com Ed		
	#13.0,13.1,13.2,		233
9	3.0 & 30.0		233
	AG Cross		
10	#2		238
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11	# 2.0,5.0		298
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12	#1	330	334
	#18,35		345
13	CROSS		
	#4		393
14	ICC STAFF		
	#1	415	425
15	#2	424	425
	CROSS		
16	#4.04		458
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1 JUDGE HALOULOS: Pursuant to the authority of the
2 Illinois Commerce Commission, I now call Docket
3 No. 05-0597 proposed general increase in rates,
4 general restructuring of rates, price unbundling of
5 bundled service rates and revision of other terms
6 and conditions of service.

7 Will the parties please identify
8 themselves for the record.

9 MS. POLEK-O'BRIEN: Darryle M. Bradford, E. Glenn
10 Rippie, Anastasia Polek-O'Brien and Richard Bernet
11 for Commonwealth Edison Company.

12 MR. FEELEY: Representing staff of the Illinois
13 Commerce Commission, John Feeley, Carmen Fosco,
14 Carla Scarsella and Sean Brady, office of the
15 general counsel, Illinois Commerce Commission, 160
16 North LaSalle Street, Suite C-800, Chicago,
17 Illinois 60601.

18 MS. SODERNA: Julie Soderna and Robert Kelter,
19 Citizens Utility Board, 208 South LaSalle, Suite
20 1760, Chicago, Illinois 60604.

21 MR. KAMINSKI: Mark Kaminski and Rishi Garg of
22 the Illinois Attorney General's Office, 100 West

1 Randolph Street, Chicago, Illinois 60601 on behalf
2 of the People of the State of Illinois.

3 MR. GOLDENBERG: Allan Goldenberg and Marie E.
4 Spicuzza, Assitant State's Attorneys, 69 West
5 Washington, Suite 3130, Chicago, Illinois 60602.

6 MR. GIORDANO: Patrick Giordano, Paul Nealon and
7 Christina Pusemp of the law firm Giordano and
8 Nealon on behalf of the Building Owners and
9 Managers Association of Chicago and refer to the
10 client as BOMA throughout the proceedings.

11 MR. BALOUGH: Good morning, Richard Balough and
12 Ellen Partridge on behalf of the CTA, 53 West
13 Jackson Boulevard, Suite 956, Chicago, Illinois.

14 MR. JOLLY: On behalf of the City of Chicago,
15 Ronald E. Jolly and J. Mark Powell, 30 North
16 LaSalle, Suite 900, Chicago, Illinois 60602.

17 MR. GOWER: I'm Ed Gower from Hinshaw and
18 Culbertson. I'm here on behalf of Metra.

19 MR. GOLLOMP: Lawrence A. Gollomp on behalf of
20 the United States Department of Energy, 1000
21 Independence Avenue, Southwest, Washington, DC
22 20585.

1 MR. TOWNSEND: Good morning, on behalf of the
2 Direct Energy Services, LLC, Mid American Energy
3 Company, Peoples Energy Service Corp and U.S.
4 Energy Savings Corp, appearing as the Coalition of
5 Energy Suppliers or The Coalition, the law firm of
6 DLA, Piper, Rudnick, Gray, Cary, US, LLP, 203 North
7 LaSalle, Chicago, Illinois 60601 by Christopher J.
8 Townsend and William A. Borders.

9 MR. REDDICK: Appearing for the Illinois
10 Industrial Energy Consumers, Eric Robertson of the
11 firm of Leuders, Robertson and Konzen, Post Office
12 Box 735, Granite City, Illinois 62040 and Conrad R.
13 Reddick, 1015 Crest Street, Wheaton,
14 Illinois 60187.

15 MR. HUDDDELSTON: For Dynegy, Inc. Barry
16 Huddelston, 1000 Louisiana Street, Houston, Texas
17 77002.

18 JUDGE HALOULOS: Is there anybody else?

19 MS. SODERNA: On behalf of the Citizens Utility
20 Board also Melvin Nickerson is also representing
21 the Citizens Utility Board.

22 JUDGE HALOULOS: Is that all?

1 Okay, one quick point before we get
2 started. Next Tuesday the Commission has scheduled
3 a special open meeting for the Liberty Report. We
4 are not planning on adjourning, we are planning on
5 relocating to N808. So that all the parties are
6 advised of this, as of now.

7 MR. KAMINSKI: Is that going to be for the entire
8 day or just --

9 JUDGE HALOULOS: The afternoon.

10 The second thing is that as it stands
11 now, we have several days of lengthy testimony
12 ahead of us. In light of that, we are going to
13 encourage all of the parties to attempt to reduce
14 any of the testimony, the amount of time they have
15 allocated for the testimony, we encourage that.
16 Please be cognizant of other parties, their Q and
17 A's, of questions asked and answered, obviously
18 don't answer it, friendly cross, don't do it. This
19 will help facilitate us in running the most
20 efficient hearing as possible.

21 JUDGE DOLAN: Is there any other preliminary
22 matters or should we --

1 MR. GIORDANO: Just a question, your Honor, are
2 we starting at 9:30 each day?

3 JUDGE DOLAN: Unless people want to start at 9:00
4 o'clock. We would certainly move to 9:00 o'clock
5 if you think we're going to have some extremely
6 long days. The ALJ's are not opposed to that.

7 MR. ROBERTSON: Eric Robertson, your Honor, for
8 IIEC, just a question, and maybe something that I'm
9 not aware of, but -- is there some difficulty with
10 adding a day or two to these hearings so people
11 have adequate time to conduct their cross if they
12 want to? I know it would take a day or two out of
13 the briefing schedule, but I don't know whether
14 anybody has thought about that, or given the
15 schedule that we have here --

16 JUDGE DOLAN: Well, technically we do have
17 Thursday and Friday of next week, or at least
18 Thursday of next week built in to the schedule. As
19 you indicated, though, it would come off of the
20 briefing schedules of the parties, because we
21 wouldn't be able to change the time frame on the
22 back end of the order.

1 We had discussed that possibility, we
2 thought that we would kind of take a wait and see
3 attitude and see how things progressed, because
4 normally people estimate on the high side, as far
5 as cross examination time frames. So we thought
6 that rather than throw that out there now, we would
7 maybe like discuss that again on Friday, and see,
8 you know, how the schedule is moving along, and
9 especially in light of the fact that if we do
10 remove some substantial testimony, then maybe we
11 can keep on track with the same schedule.

12 But both Judge Haloulos and myself are
13 willing to, you know, stay past 5:00 o'clock, work
14 until 6:00, 7:00, whatever we have to do to try to
15 get as much information and get this done in a
16 timely fashion.

17 MR. GIORDANO: Your Honor, you made a decision
18 that we're going to start at 9:00 or are you
19 playing that by ear as well?

20 JUDGE DOLAN: Actually I think we would be fine
21 with starting at 9:00, so if no one really has a
22 problem with that, why don't we start 9:00 o'clock

1 every day for the rest of the hearings.

2 MR. TOWNSEND: Your Honor, Chris Townsend
3 appearing on behalf of the Coalition of Energy
4 Suppliers. We do have a pending motion for a
5 substitution of witnesses and I just wanted to
6 touch base with your Honor to see if you also want
7 us to file a motion for leave to change our
8 pretrial memorandum and our exhibit lists or if
9 it's fine to be able to do that on the record?

10 Literally the only change, both to the
11 testimony and to those documents would be changing
12 the name of the witness. As you may have seen in
13 the motion, one of the companies that comprise The
14 Coalition had a change in their CFO and so we had
15 their CFO previously testifying, we've got the new
16 CFO that's going to be testifying now. Do you want
17 us to file additional documents or is it all right
18 to be able to do that on the record?

19 JUDGE DOLAN: I think -- we feel that it would be
20 fine to do it on the record itself. I didn't know
21 if anyone was going to object to that motion
22 because we did see that come in late yesterday

1 afternoon and obviously no one else has had an
2 opportunity to respond to the testimony -- or to
3 the motion itself, but, no, you can do the
4 modification on the record.

5 MS. POLEK-O'BRIEN: Your Honor, Com Ed has no
6 objection to the motion.

7 JUDGE DOLAN: That's fine, then, that makes it
8 easier for us. We can definitely do it on the
9 record, then.

10 MR. TOWNSEND: Then one other scheduling note.
11 We have a panel of John Clark and Jennifer Witt
12 scheduled to come in on next Monday. We've been
13 informed that one of the members of the panel has a
14 business obligation that's going to take -- John
15 Clark, is going to be out of town. Currently Com
16 Ed has a total of 5 minutes of cross examination
17 reserved for that panel. We're working with Com Ed
18 to be able to try to address that situation,
19 hopefully we'll be able to resolve that amicably
20 and find an alternative solution. But I just
21 wanted to alert you to that.

22 We may be asking for another

1 substitution of witness if that doesn't work or
2 potentially having a witness connected by
3 telephone. Again, we're not requesting you to
4 address that at this point, but just wanted to
5 alert you to that situation.

6 JUDGE DOLAN: Thank you.

7 MR. GIORDANO: Your Honor, I think I have one
8 final scheduling thing. Cross exhibits that we
9 haven't previously identified, do you want us to,
10 if we're presenting those, do you want us to update
11 the exhibit list?

12 JUDGE DOLAN: Yes.

13 MR. GIORDANO: But it can be done after the fact?

14 JUDGE DOLAN: That's correct, yeah.

15 MR. GIORDANO: Thank you.

16 MR. FEELEY: Staff has one request regarding the
17 March 16 letter from Commissioners Ford and
18 Lieberman. Currently responses and replies to
19 those questions are due April 4th and April 7th and
20 you indicated that there would be subsequent
21 hearings scheduled for that. Staff would request
22 that it have have more time than April 4th to

1 provide response to those questions and I'm not
2 sure if you wanted to -- if you would be agreeable
3 to removing that matter from the brief and briefing
4 it separately?

5 So we would ask that -- we need more
6 time than April 4th to respond to those and would
7 you be agreeable to removing that issue from the
8 brief and therefore providing staff and other
9 parties more time to respond to the questions and
10 hold that subsequent hearing?

11 JUDGE DOLAN: How about if we'll -- I mean, how
12 much additional time are you thinking, just so we
13 know for our own personal --

14 MR. FEELEY: At least we would like until April
15 18th for our first response to the question.

16 JUDGE DOLAN: What day of the week is April 18th?

17 MR. FEELEY: That's a Tuesday.

18 JUDGE DOLAN: I tell you what, Mr. Feeley, we'll
19 take that under advisement. Just for the record
20 purposes, if you would try to file something, if
21 you wouldn't mind filing a motion for extension of
22 time, then it will give us an opportunity to do

1 that.

2 MR. FEELEY: And then just to clarify, the
3 parties no longer have to answer the questions
4 regarding the safety net; is that correct?

5 JUDGE DOLAN: That's correct, yes. Since that's
6 been stricken from the record, it's not
7 something -- the Commissioners want the other
8 information to be part of the record.

9 MR. FEELEY: Thank you.

10 MR. ROBERTSON: Eric Robertson again, your Honor.
11 One last question. There were a number of motions
12 to strike, or a couple, and the question I had,
13 were you planning on ruling on those at the
14 beginning of the hearings or as a witness appeared
15 or how were you planning on handling that?

16 JUDGE DOLAN: We actually sent our rulings down
17 to the clerk's office yesterday afternoon, but they
18 did not get them out on e-docket, but we have ruled
19 on those motions. We did not rule on, I believe
20 Commonwealth Edison filed the motion to file their
21 substituted testimony -- or their corrected
22 testimony, we have not ruled on that motion, but we

1 did rule on your motion and we ruled on the City's
2 motion yesterday.

3 Any other matters before we go? I guess
4 the only other things that the court reporters just
5 brought up, that they are going to be working on
6 1 hour and 15-minute schedules, so we are probably
7 going to have a change of court reporters at 12:15,
8 and then a second change of court reporters at
9 1:30. So our suggestion is to see where we are at
10 at 12:15 and maybe we'll take our break for lunch
11 at that point. But we'll see where we're at as far
12 as the testimony goes. But we are going to try to
13 work around the court reporters' schedules as much
14 as possible so we don't have a reporter showing up
15 for 5 minutes and taking a break for lunch or
16 something like that, if that's acceptable for the
17 parties.

18 And with that, are we ready to call the
19 first witness?

20 MR. BRADFORD: Yes, sir my name is Darryl
21 Bradford, and we call as our first witness Mr.
22 Frank M. Clark.

1 JUDGE DOLAN: Just for the ALJ's, are we going in
2 the order of the questioning that the list is here,
3 or did you have a particular order of how the
4 questioning was going?

5 MR. FOSCO: The list and the schedule is not
6 indicative of how the parties plan to proceed.

7 JUDGE DOLAN: Just one other preliminary matter
8 before we proceed. Sir, from Dynegy, I didn't get
9 your name, are you planning on participating in
10 this docket or are you just here -- are you going
11 to ask any questions, I guess, is what I'm asking?

12 MR. HUDDDELSTON: No questions at this point.

13 JUDGE DOLAN: Because are you licensed in
14 Illinois?

15 MR. HUDDDELSTON: No.

16 JUDGE DOLAN: So if you do, we have to deal with
17 that issue, but since you're not going to be asking
18 questions, we don't have to worry about that at
19 this point. Go ahead and proceed.

20

21

22

1 FRANK M. CLARK,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY
6 MR. BRADFORD:
7 **Q.** Can you please state your name.
8 **A.** Frank M. Clark.
9 **Q.** Mr. Clark by whom are you employed?
10 **A.** I'm employed by Commonwealth Edison.
11 **Q.** What is your position with Commonwealth
12 Edison?
13 **A.** I am chairman and CEO of Commonwealth
14 Edison.
15 **Q.** Mr. Clark, I have previously provided you
16 with a copy of your revised surrebuttal testimony
17 Com Ed Exhibit 29, which we filed on March 20,
18 e-docket No. 166825, do you have that testimony in
19 front of you?
20 **A.** Yes, I do.
21 **Q.** Is this the surrebuttal that you have
22 prepared for admission in this proceeding?

1 **A.** Yes, it is.

2 **Q.** Do you wish to make any changes or
3 revisions to this surrebuttal testimony?

4 **A.** No.

5 **Q.** If I asked the same questions today, would
6 your answers be the same as they appeared in your
7 surrebuttal testimony?

8 **A.** Yes.

9 **Q.** I have previously provided to you a copy of
10 your testimony, Com Ed Exhibit No. 1, along with
11 exhibits to that testimony, 1.1, 1.2 and 1.3, which
12 were filed on August 31, e-docket Nos. 151951
13 through 151954, respectively. Do you have that
14 testimony and exhibits in front of you, Mr. Clark?

15 **A.** Yes, I do.

16 **Q.** Is this the direct testimony that you have
17 prepared for submission in this proceeding today?

18 **A.** Yes, it is.

19 **Q.** Other than as you updated in your
20 surrebuttal testimony, do you wish to make any
21 changes or revisions to your prefiled direct
22 testimony?

1 **A.** No, I do not.

2 **Q.** And are the exhibits that are referred to
3 in your testimony, which is Com Ed Exhibit No. 1,
4 the exhibits that are attached to your testimony as
5 Exhibits 1.1, 1.2 and 1.3?

6 **A.** Yes.

7 **Q.** If I asked you the same questions today,
8 would your answers be the same as they appear in
9 your prefiled testimony, Exhibit 1?

10 **A.** Yes.

11 MR. BRADFORD: Your Honor, at this point I would
12 move Com Ed Exhibit 1, 1.1, 1.2, 1.3 and Exhibit 29
13 into evidence.

14 JUDGE DOLAN: Any objections?

15 MR. BRADFORD: Your Honor, in the haste to get
16 going, I note that we did not swear Mr. Clark in,
17 and we probably should do that.

18 JUDGE DOLAN: I was going to do that at this
19 point. I was going to let you introduce his
20 testimony and then I was going to swear him in at
21 that point.

22 Mr. Clark, please raise your right hand.

1 (Witness sworn.)

2 MR. BRADFORD: I would move the admission of that
3 testimony.

4 JUDGE DOLAN: No objections? That testimony will
5 be admitted into evidence.

6 (Whereupon, Com Ed
7 Exhibits Nos. 1, 1.1, 1.2 and 1.3
8 were admitted into evidence as
9 previously marked on e-docket as
10 of this date.)

11 MR. BRADFORD: And tender the witness for cross
12 examination, your Honor.

13 JUDGE DOLAN: Are you going to go first?

14 MR. KAMINSKI: I'm happy to go first.

15 JUDGE DOLAN: Mr. Kaminski, please proceed.

16 CROSS EXAMINATION

17 BY

18 MR. KAMINSKI:

19 Q. Thank you. Good morning, Mr. Clark, Mark
20 Kaminski with the Attorney General's Office of
21 Illinois. Would you please refer to Page 8 of your
22 direct testimony.

1 There you refer to the consensus of the
2 post 2006 initiative and the consensus agreements
3 reached in the Commission's post 2006 initiative in
4 support of Com Ed's tariff filings in this case,
5 correct?

6 **A.** That is correct.

7 **Q.** Could you now refer to Exhibit 1.3, Page 9.
8 The second full paragraph on that page reads at
9 each RWG meeting, participants were reminded of the
10 applicability of the Illinois Commerce Commission's
11 traditional policy barring the subsequent use of
12 non consensus, quote, positions taken and documents
13 and papers provided by the stakeholders in the post
14 2006 initiative process, any subsequent litigation,
15 including administrative proceedings, before the
16 Illinois Commerce Commission, the Federal Energy
17 Regulatory Commission and other federal state and
18 local governmental authorities. Have I read that
19 correctly?

20 **A.** Yes, you have.

21 **Q.** Do you know where the quoted language is
22 from?

1 **A.** Do I know where the language -- the
2 language that you just read?

3 **Q.** There is a quote within the language that I
4 just read, denoting most of what I read.

5 **A.** I don't know whether it came directly from
6 the Commerce Commission or some other source.

7 MR. KAMINSKI: Your Honor, just one question
8 regarding cross exhibits, do you want us to just
9 have us, as a party, go in numerical order, like
10 Cross Exhibit 1, 2, regardless of who I'm crossing?

11 JUDGE DOLAN: Yes. I need to go off the record
12 for just one second, I forgot my stamp.

13 (Break taken.)

14 JUDGE DOLAN: All right, back on the record;
15 BY MR. KAMINSKI:

16 **Q.** Please see what has been marked for
17 identification as AG Exhibit -- Cross Exhibit 1.
18 This is the workshop preamble document provided on
19 the ICC website on post 2006 initiative page
20 h-t-t-p colon, slash, slash, w-w-w, dot, ICC, dot,
21 Illinois, dot, j-u-v, slash, d-o-c, slash, e-p,
22 slash, 3040511 e-c, post preamble, dot, p-d-f.

1 Could you read the document I've
2 provided to you?

3 **A.** Do you want me to read the preamble?

4 **Q.** Please.

5 **A.** In order to facilitate free and open
6 discussion, the stakeholders wish to assure that
7 statements made, positions taken and documents and
8 paper provided by stakeholders in the post 2006
9 initiative will not be used, including
10 administrative proceedings, before the Illinois
11 Commerce Commission and Federal Energy Regulatory
12 Commission and other federal state and local
13 governmental authorities.

14 **Q.** Thank you. Do you recognize the part of
15 this document starting with positions taken as the
16 quotation from your Exhibit 1.3, Page 9?

17 **A.** Yes.

18 MR. KAMINSKI: Your Honor, at this time I ask for
19 the submission into evidence of AG Cross Exhibit
20 No. 1.

21 MR. BRADFORD: No objection.

22 JUDGE DOLAN: AG Cross Exhibit No. 1 will be

1 admitted into evidence.

2 (Whereupon, AG Cross

3 Exhibit No. 1 was marked for

4 identification and admitted into

5 evidence as of this date.)

6 MR. KAMINSKI: That's all I have, thank you.

7 JUDGE DOLAN: Next, anybody else?

8 MR. KELTER: I can go next, your Honor.

9 JUDGE DOLAN: Okay. Mr. Kelter.

10 CROSS EXAMINATION

11 BY

12 MR. KELTER:

13 Q. Good morning, Mr. Clark, I'm Rob Kelter

14 from the Citizens Utility Board.

15 A. Good morning, Rob.

16 Q. Mr. Clark, you're familiar, generally, with

17 the ratemaking process, aren't you?

18 A. Yes.

19 Q. And would you agree that it's fair to say

20 that Com Ed is entitled to recover prudently

21 incurred costs and earn a return on its investment?

22 A. Yes.

1 **Q.** At Page 6, if you turn to Page 6, Line 124
2 of your testimony. There you state, Com Ed must
3 recover sufficient revenue through its retail rates
4 to cover its costs. That's basically just a
5 restatement of a fundamental ratemaking principle,
6 correct?

7 **A.** Yes.

8 **Q.** Under the next sentence you state, this is
9 especially important given that Com Ed processes to
10 earn no profit on its procurement and supply of
11 electricity. The fact that you will will no longer
12 earn a profit on generation doesn't affect the
13 Commission's analysis of Com Ed's cost, does it?

14 **A.** It's just a statement of fact.

15 **Q.** Well, this is especially important, that
16 sounds like a statement of opinion.

17 **A.** Well, it was a statement of fact, in my
18 judgment.

19 **Q.** I'm sorry?

20 **A.** It was a statement of fact, in my judgment,
21 the fact being that we will earn no return on the
22 price we pay for supply and pass that price through

1 to our customers.

2 **Q.** At Line 134 you state, because Com Ed is
3 proposing to pass through its procurement and
4 expenses as its actual cost, it becomes absolutely
5 essential for Com Ed's delivery rates and charges
6 to be set at a level sufficient for Com Ed to meet
7 its distribution revenue requirement and thereby
8 support its investment in distribution, plant and
9 equipment.

10 Regarding the phrase it becomes
11 absolutely essential, are you saying that Com Ed
12 should -- or that the Commission should analyze Com
13 Ed's cost differently now than it would if Com Ed
14 still owned generation?

15 **A.** I'm saying that under the old traditional
16 model, prior to the enactment of the 1997
17 restructuring, when we did traditional rate cases,
18 we had all of our costs bundled together and they
19 weren't separated as they would be in this docket.
20 And we were earning a return on our higher cost
21 base. And I believe in the traditional cases that
22 would have included supply.

1 That is no longer the case. The only
2 return the company is earning is on its rate basis,
3 directly related to the delivery -- to the
4 distribution business. And in order for us to have
5 adequate revenues and an adequate amount of
6 investment for further reliability, it is, in my
7 judgment, essential that we are allowed to recover
8 our prudently incurred cost and earn a reasonable
9 return on the rate base associated with the
10 distribution business.

11 **Q.** The standards for cost recovery haven't
12 changed since the 1997 restructuring law, have
13 they?

14 **A.** I'm not aware of that.

15 **Q.** And when Com Ed owned its nuclear plants,
16 it earned a rate of return on its capital
17 investment on those plants, correct?

18 **A.** That is correct.

19 **Q.** And isn't it correct that Com Ed made a
20 strategic decision to transfer it to an Exelon
21 affiliate?

22 **A.** That is also correct.

1 **Q.** At that time, did Com Ed's ownership of
2 those nuclear plants pose regulatory risks for the
3 Company?

4 **A.** At the time of the transfer?

5 **Q.** No, at the time, before the transfer, when
6 you owned those plants, isn't it fair to say the
7 plants posed some regulatory risks for the Company?

8 **A.** I think those plants created regulatory and
9 pricing risks for the Company and the Company's
10 customers.

11 **Q.** Turning to Line 138, you state, moreover,
12 during the transition period Com Ed had other
13 sources of revenue, which while they were designed
14 to partially mitigate straining costs did provide
15 sources of cash nonetheless. Did the fact that Com
16 Ed had other sources of revenue available during
17 the transition period affect the test that the
18 Commission applies to determine the appropriate
19 level of Com Ed's rates in this proceeding?

20 **A.** I think the fact that Com Ed had revenues
21 that were available to us over the transition
22 period and those revenues would go away, for

1 example, the CTC revenues, is a fact that goes to
2 our ability to have adequate revenues post 2006 to
3 recover our prudently incurred cost, yes.

4 Q. But aren't the adequate revenues that you
5 need based on the costs you have and the rate of
6 return on your delivery service system itself?

7 A. Yes.

8 Q. These statements you've made regarding the
9 need to meet its distribution revenue requirement,
10 did you or anyone under your control at Com Ed
11 discuss this issue with Commissioners before you
12 filed this case?

13 A. I did not and I'm not aware of -- excuse
14 me, Rob, repeat the question, I want to make sure
15 I'm answering exactly what you're asking.

16 Q. I'm talking about these statements you've
17 made that we've just discussed regarding the need
18 for Com Ed to meet its distribution revenue
19 requirement. Did you or anyone under your control
20 at Com Ed discuss this issue with the Commissioners
21 before you filed this case?

22 A. I'm not aware of any such discussion taking

1 place and I did not.

2 Q. At Line 124 you state, Com Ed must recover
3 sufficient revenue through its retail rates to
4 cover its cost if it is to continue to be able to
5 provide customers with adequate, safe and reliable
6 service, correct?

7 A. I'm sorry, Rob, I've got a head cold so I
8 just didn't hear what you just said, I didn't hear
9 that part of it.

10 Q. I have a head cold, too.

11 A. Repeat that, please.

12 Q. It's Line 124, you state, Com Ed must
13 recover sufficient revenue through its retail rates
14 to cover its cost if it is to continue to be able
15 to provide customers with adequate, safe and
16 reliable service; is that correct?

17 A. That is correct.

18 Q. And that has always been the case going
19 back to before restructuring, correct?

20 A. Yes, that is correct.

21 MR. KELTER: That's all I have.

22 JUDGE DOLAN: Who wants to go next?

1 Mr. Giordano?

2 MR. GIORDANO: Sure.

3 CROSS EXAMINATION

4 BY

5 MR. GIORDANO:

6 Q. Good morning, your Honors, I'm Patrick
7 Giordano, I represent the Building Owners and
8 Managers Association of Chicago. Mr. Clark, good
9 to see you here this morning. In my long history
10 at the Commission, as I recall, you are the first
11 chairman and CEO of Com Ed to appearing in front of
12 the Commission in a Com Ed rate case. And I think
13 you should be commended for that.

14 A. Thank you.

15 Q. Please refer to Page 1, Lines 5 and 6 of
16 your direct testimony, where you stated that you
17 are executive vice president and chief of staff of
18 Exelon Corp and president of Com Ed.

19 A. Yes.

20 Q. Now, this was a true statement at the time
21 your testimony was previously filed with the ICC,
22 correct?

1 **A.** That is correct.

2 **Q.** And isn't it true, that you are now
3 chairman of and CEO of Com Ed and are no longer an
4 officer of Exelon Corp?

5 **A.** That is correct.

6 **Q.** Now, other than your excellent
7 qualifications to be chairman and CEO of Com Ed,
8 are there any other reasons that your job title was
9 changed?

10 **A.** Well, I think that the first part of your
11 statement was a compliment and thank you for that.
12 There are a number of reasons why my job title and
13 position changed. In fact, it is reflective of
14 events that were occurring late last year, and I
15 felt strongly that it was necessary for Com Ed to
16 further demonstrate that it is an independent and
17 separate entity from its parent, Exelon
18 Corporation.

19 So far and so much so, that I felt the
20 need to establish a separate Com Ed board with Com
21 Ed directors. We've always had a Com Ed board for
22 regulatory and financial purposes. I felt that we

1 needed to give a further demonstration of the
2 separation of the entity and define the
3 independence of Com Ed. We also added a number of
4 senior level executives to Com Ed, reporting to the
5 president of Com Ed, Darryl Mitchell, who reports
6 to me.

7 But my purposes clearly are reflected in
8 the events that were taking place in October and --
9 September, October time frame of last year and I
10 felt the need to further affirm the separate
11 financial independence and a separate identity of
12 Commonwealth Edison.

13 Q. Now, isn't it true that you were elected to
14 the position of chairman and CEO of Com Ed?

15 A. Yes.

16 Q. And who elected you to that position?

17 A. It was a series of steps. It took
18 actually -- the owners of Com Ed, Com Ed is a
19 wholly owned subsidiary of Exelon, and the owners
20 of Com Ed, in fact, are the shareholders of Exelon.
21 So it took actions by both the Exelon and Com Ed
22 boards, I can't recite all the steps, but I was

1 actually elected chairman of Com Ed by the Com Ed
2 directors and there are four Com Ed directors, I am
3 the fifth.

4 Q. But you were elected by the Exelon Corp --
5 you were elected by Exelon Corp, which is a --
6 which is the sole owner of Com Ed, as CEO of Com
7 Ed; is that correct?

8 A. I would have to go back and -- I don't want
9 to give you a sequencing that's incorrect. My
10 recall of the question is I was elected by the Com
11 Ed board, not the Exelon board.

12 Q. What was Com Ed's involvement in your
13 becoming the chairman and CEO of Com Ed?

14 A. Some of the Exelon directors, four of them,
15 in fact, Edgar Jannottta, Dick Thomas, Sue Gin and
16 John Rogers, became Com Ed directors, and those Com
17 Ed directors ultimately voted me as chairman and
18 CEO of Com Ed. I resigned my position as president
19 and I was elected by that board as the chairman and
20 CEO.

21 Q. And those directors and you, as a director,
22 were all elected by Exelon Corp as directors; is

1 that correct?

2 **A.** Pat, I'm not trying to be evasive, I don't
3 recall the sequencing. I was elected by the Com Ed
4 board, I was not elected chairman by the Exelon
5 board.

6 **Q.** I understand that, but you were elected as
7 a director by Exelon Corp, the sole shareholder of
8 Com Ed, prior to the time that you were elected as
9 chairman of the board by the Com Ed directors who
10 were also elected by Exelon Corp, the sole
11 shareholder of Com Ed, isn't that correct, that
12 that's the way it went?

13 **A.** I just don't recall.

14 **Q.** So you are willing to provide that as an
15 exhibit for the record?

16 **A.** Yes.

17 MR. GIORDANO: And I think it might be helpful, I
18 would like to show you BOMA Cross Exhibit 1.

19 (Whereupon, BOMA Cross
20 Exhibit No. 1 was
21 marked for identification
22 as of this date.)

1 BY MR. GIORDANO:

2 Q. BOMA Cross Exhibit 1 is a news release of
3 November 28, 2005, Com Ed announces new directors
4 and senior officers. Are you familiar with this
5 document?

6 A. I am familiar with the press release issued
7 by Com Ed and this looks like that document.

8 Q. And this is from the Com Ed website,
9 Mr. Clark. And this -- it's true, is it not, that
10 this document includes, so we can clarify for the
11 record, the announcements of the new five-member
12 board of directors of Com Ed, and as well as the
13 appointment of a new slate of Com Ed officers, each
14 without responsibilities to Exelon. And that the
15 release also states that the actions include the
16 election of a new board of directors and a slate of
17 senior officers who no longer have responsibilities
18 at Exelon; is that correct?

19 A. That is correct with respect to the Exelon
20 officers, yes.

21 Q. But it also states here in the first
22 paragraph, the actions include the election of a

1 new board of directors, who no longer have
2 responsibilities at Exelon, correct?

3 **A.** And those board of directors acting as
4 directors of Com Ed, have no fiduciary
5 responsibility in that capacity, other than to Com
6 Ed, that is correct.

7 **Q.** And in this press release, it also states,
8 does it not, and this came out when you were
9 elected as chairman and CEO, that this action, your
10 election, and the appointment of a Com Ed board,
11 and slate of officers without responsibility to
12 Exelon, was, quote, intended to affirm the fact
13 that Com Ed is an independent entity and distinct
14 from parent Exelon Corporation?

15 MR. BRADFORD: Mr. Giordano, can I request that
16 you identify where in the press release your
17 reading from so the witness can follow along?

18 MR. GIORDANO: Yes, sir.

19 BY MR. GIORDANO:

20 **Q.** It's actually the first sentence, sorry, I
21 was reviewing the rest of it. It's the first
22 sentence where it says, Com Ed announced today

1 several actions intended to affirm the fact that
2 Com Ed is an independent entity, separate and
3 distinct from parent Exelon Corporation, correct?

4 **A.** That is correct.

5 **Q.** Does this mean that there is no longer any
6 communication between the officers and directors of
7 Com Ed and the officers and directors of Exelon
8 Corp regarding financial and strategic decisions?

9 **A.** No, it does not.

10 **Q.** So, financial and strategic decisions of
11 Com Ed are still discussed with the -- between the
12 officers and directors of Com Ed, and the officers
13 and directors of Exelon?

14 **A.** Pat, your question was were there any
15 communications?

16 **Q.** Correct.

17 **A.** And the answer is yes, there are. Com Ed
18 is a wholly owned subsidiary of Exelon. And for
19 example, the Exelon CFO would have interest in the
20 enterprise as a whole, including the financial
21 conditions of Com Ed. Decisions involving Com Ed
22 and Com Ed's financial independence and financial

1 security are made by me, the senior officers of Com
2 Ed and, where appropriate, the Com Ed board.

3 Q. Can you please describe, when you said
4 there are communications between the officers and
5 directors of Com Ed, and the officers and directors
6 of Exelon regarding financial and strategic
7 decisions, can you please describe what
8 communications like those have occurred since this
9 November 28th, 2005 press release.

10 MR. BRADFORD: Could I ask for clarification on a
11 subject? Is it any topic, if there has been any
12 communications on, it's an awfully broad question.

13 MR. GIORDANO: Well, I think he can answer it.

14 MR. BRADFORD: Object to the form of the
15 question.

16 JUDGE DOLAN: It does seem rather broad, if you
17 could narrow it, I'll sustain the objection.

18 BY MR. GIORDANO:

19 Q. Have there been any communications
20 regarding proceedings pending before the Illinois
21 Commerce Commission?

22 A. I would think that the Com Ed CFO would

1 have informed the Exelon CEO, for example, that I
2 am testifying today before the Illinois Commerce
3 Commission. Any discussions beyond that, I'm not
4 aware of.

5 Q. Do you have discussions with Mr. Rowe, the
6 chairman and CEO of Exelon Corp?

7 A. Yes, I do.

8 Q. And do you have discussions with him about
9 the management and financial and strategic
10 decisions of Com Ed?

11 A. John Rowe is the chairman of Exelon, the
12 owners of Com Ed. Exelon is the principal
13 shareholder of Com Ed. So in that regard, the
14 answer, of course, is yes.

15 Q. So it's your position that Com Ed is an
16 independent entity, even though Exelon Corp still
17 owns 100 percent of the stock of its subsidiary Com
18 Ed?

19 A. Yes, Com Ed is an independent entity, it is
20 financially separate from Exelon. Com Ed, as you
21 know, is a regulated utility. Exelon Corporation
22 is an unregulated enterprise.

1 **Q.** Do you know of any other corporations that
2 have taken the position that an affiliate is an
3 independent entity of a corporation that owned
4 100 percent of the stock?

5 **A.** I know that there are other organizational
6 structures that would infer that, I don't know what
7 discussions have been had.

8 **Q.** Can you cite anything that you're aware of,
9 you are a very intelligent man and you review this,
10 I'm sure you reviewed this, before you made these
11 announcements did you review whether any or
12 corporation in America or internationally had ever
13 made an announcement that a corporation -- I
14 subsidiary that was 100 percent owned by a parent
15 was an independent entity, did you review that?

16 **A.** Well, no.

17 **Q.** So you don't know?

18 **A.** My answer is no.

19 **Q.** And you don't know whether another
20 corporation has ever made an announcement like
21 that?

22 **A.** I didn't say that. You asked did I review

1 what other corporations may have done anywhere in
2 the world, and the answer is no. But I'll tell you
3 what I did do. We did look at other corporate
4 structures, and the example that I would make was
5 going to be, for example, the southern companies,
6 the energy companies, and there are others, I just
7 can't recall them all. This is not a unique
8 corporate model.

9 Q. But your corporate structure did not change
10 when you changed the officers and directors, did
11 it?

12 A. Indeed it it did.

13 Q. The corporate structure where Exelon Corp
14 owned 100 percent of Com Ed and also owned
15 100 percent of Exelon Generation and other
16 affiliates, that corporate structure did not change
17 when you made this announcement about the directors
18 and officers; isn't that correct?

19 A. That is not correct.

20 Q. Can you explain how that changed?

21 A. What did not change was the ownership.
22 What did change, and I think significantly, was the

1 independence, the separation between the utility
2 and the unregulated enterprise.

3 **Q.** Isn't it true that Com Ed has a fiduciary
4 duty to it's sole stockholder, Exelon Corp, to
5 maximize Com Ed's profits to the greatest extent
6 possible?

7 **A.** Exelon Corporation has the fiduciary
8 responsibility to the shareholders of Exelon to
9 optimize shareholder value. Com Ed has a
10 responsibility to get its obligation served.

11 **Q.** But does Com Ed have a fiduciary duty, just
12 like any other entity, to its owner, its
13 stockholder, to maximize profits to the greatest
14 extent possible?

15 MR. BRADFORD: Your Honor, I'm going to object,
16 calling for a legal conclusion about fiduciary
17 duties of corporations. And I would also object on
18 the form of the question, I'm not aware of
19 corporations having fiduciary duties.

20 JUDGE DOLAN: I'll sustain that objection.

21 BY MR. GIORDANO:

22 **Q.** Isn't it -- you testified that Exelon

1 Corporation has a duty to maximize shareholder
2 value for its shareholder, who is Exelon Corp's
3 shareholders.

4 **A.** Well, I'm not an expert on the Exelon
5 shareholder structure. We have financial witnesses
6 that can probably attest more to that than I, but
7 we're owned by a number of large enterprises and
8 individual shareholders.

9 **Q.** Okay. And isn't it true that the same
10 concept holds whenever there is a shareholder, that
11 there is an obligation to maximize shareholder
12 value?

13 **MR. BRADFORD:** Your Honor, I'll renew my
14 objection, I think we're dancing around the same
15 point again.

16 **MR. GIORDANO:** I disagree, I didn't ask for a
17 legal conclusion, I just asked -- Mr. Clark is the
18 chairman and CEO of Com Ed, he can answer a
19 question about whether there is a duty to maximize
20 shareholder value.

21 **JUDGE DOLAN:** For what it's worth, I'll overrule
22 the objection.

1 THE WITNESS: Commonwealth Edison is a regulated
2 utility with an obligation to serve 3.7 million
3 customers in Northern Illinois. I view that as my
4 primary responsibility.

5 BY MR. GIORDANO:

6 Q. So your responsibility to your customers is
7 greater than your responsibility to your owner,
8 Exelon Corporation; is that right?

9 A. I can only affirm what I just stated,
10 Mr. Giordano. I view my role as chairman and CEO
11 of Commonwealth Edison Company to be the primary
12 responsibility of the utility. And that primary
13 responsibility is to meet the obligation to serve
14 3.7 million customers. I don't see anything
15 inconsistent with that, incidentally, in operating
16 in the manner that is proper.

17 Q. Isn't it true that Exelon Corporation's
18 consolidated financial statement is what is
19 released to the investment community?

20 A. Yes.

21 Q. And isn't it true that Exelon Corp's
22 financial condition has been strong during the

1 10-year of the freeze on Com Ed's bundled rates,
2 including 2005 and the first three months of 2006?

3 **A.** Exelon, you said 10 years, and I don't
4 believe that's how long it's been in existence,
5 10 years, but the years you specifically stated
6 2005 is correct.

7 **Q.** And the first three months of 2006?

8 **A.** Yes, that's correct.

9 **Q.** Now, let's focus on substantive portions of
10 your direct testimony, Page 5. Let's focus on the
11 short answer you state on Pages 5 to 6, Lines 113
12 to 114, in response to the question you were asked
13 on Page 5, Line 112. And that question, why is Com
14 Ed proposing increased charges for delivering
15 electricity.

16 And in response, you stated, correct,
17 that the short answer is because Com Ed's costs
18 have risen significantly over the last decade. At
19 the same time as its rates have been frozen and
20 reduced, correct?

21 **A.** That is correct.

22 **MR. GIORDANO:** Before we do that, I neglected to

1 move for the admission of BOMA Cross Exhibit 1, I
2 would like to do that now.

3 MR. BRADFORD: No objection, your Honor.

4 JUDGE DOLAN: BOMA Cross Exhibit No. 1 will be
5 admitted into evidence.

6 (Whereupon, BOMA Cross
7 Exhibit No. 1 was
8 admitted into evidence as
9 of this date.)

10 BY MR. GIORDANO:

11 Q. Isn't it true that you are referring to Com
12 Ed's bundled rates when you state that rates have
13 been frozen and reduced?

14 A. That is correct.

15 Q. And isn't it true that the subject of this
16 case are Com Ed's delivery service rates and not
17 Com Ed's bundled rates?

18 A. The delivery service component will be a
19 part of whether the rates -- let me start again.

20 Whether we're talking about bundled or
21 unbundled rates, in 2007, the delivery service
22 component, distribution component, I would assume,

1 would have been the same for either, whether they
2 are bundled or unbundled.

3 **Q.** But the subject of this case, of whether or
4 not rates should be increased, this proceeding, is
5 an increase of delivery service rates; isn't that
6 correct?

7 **A.** It is the increase in delivery service
8 rates. It will ultimately also include the pass
9 through of the supply component and a small
10 transmission component, but yes, the answer to your
11 question would be yes.

12 **Q.** So it's your position that the supply cost
13 is relevant, you would like to litigate that again,
14 here?

15 **A.** No. I said that ultimately the supply
16 cost, as well as the transmission fees, will be
17 passed through our rates.

18 **Q.** Because if you would like to, we're ready
19 to go. We still have a proposal that we think you
20 should implement, but I didn't think that the
21 Commission would want to hear that today, but maybe
22 they do. Because it's certainly not resolved yet.

1 Isn't it true -- but let's talk about
2 delivery service rates, because that's just as
3 important. Isn't it true that Com Ed's delivery
4 service rates, which are the subject of this
5 proceeding, were increased substantially in the
6 year 2003?

7 **A.** There was an increase in our delivery
8 service tariffs in 2003, yes.

9 **Q.** So those rates have not been frozen, the
10 rates that are the subject of this case, correct?

11 **A.** Those rates, in fact, those customers that
12 have left the system, yes.

13 **Q.** When you said that those rates for
14 customers that left the system, but those rates
15 have been increased, and you are asking for an
16 increase in those rates and you are asking for that
17 increase be relevant to all customers; isn't that
18 correct?

19 **A.** I'm asking for an increase in the delivery
20 service -- in this case, I'm asking for an increase
21 in the delivery service tariffs that will be
22 applicable to all customers, that is correct.

1 **Q.** Correct. Now, in 2003, isn't it true that
2 there was a revenue requirement increase in the
3 delivery service rates from 1.242 billion to 1.508
4 billion, an increase of \$266 million or 21 percent?
5 And if you need to check those, we've got -- we
6 have the orders here, we can present them.

7 **A.** I'll accept that your numbers are correct,
8 subject to check. It sounds right.

9 MR. GIORDANO: Your Honor, would you like to see
10 these cross exhibits of the orders? I think it's
11 probably a good idea. The first one.

12 MR. BRADFORD: If it saves time, these are orders
13 of the Commission, I don't know that they need to
14 be marked as evidence in the case. Your Honor can
15 take notice of them.

16 MR. GIORDANO: That would be fine. Maybe the
17 best thing to do is just to show Mr. Clark the
18 numbers so we don't have a subject to check issue.

19 JUDGE DOLAN: That's correct, that's fine. And
20 if you could just give the docket numbers, so if
21 anybody --

22 MR. GIORDANO: I can show you a copy so that you

1 have them while we're looking at this.

2 BY MR. GIORDANO:

3 Q. I would refer you first to the order,
4 actually it's the amendatory order of the
5 Commission is the last page of what I handed you,
6 Mr. Clark, in Docket No. 99-0117. This order was
7 issued September 9th, 1999?

8 A. Yes.

9 Q. And it's actually the line that says Pages
10 137, finding 6, delete 1.255.

11 A. Yes.

12 Q. And insert 1.242. So isn't it true that
13 the revenue requirement approved in this
14 proceeding, Docket No. 99-0117 in September of
15 1999, for Com Ed's delivery services, was \$1.242
16 billion?

17 A. Yes.

18 Q. And then I'll refer you to the Commission's
19 order in Docket No. 01-0423, finding No. 7 on Page
20 155. Isn't it true that that shows --

21 A. Yes, it does.

22 Q. That the jurisdictional revenue requirement

1 for delivery services is \$1.507 billion?

2 A. Yes.

3 Q. Or 1.508 if you round it. And that is an
4 increase of 266 million, correct?

5 A. That is correct.

6 Q. And you would accept, subject to check,
7 that that is the 21 percent increase?

8 A. Sounds right.

9 Q. So isn't it true that the level of Com Ed's
10 bundled rates are irrelevant to the Commission's
11 delivery service rates -- decision on Com Ed's
12 delivery service rates, which the Commission is
13 making in this case?

14 A. I'm sorry, would you repeat that question?
15 Did you say relevant or irrelevant?

16 Q. Irrelevant. The level of Com Ed's bundled
17 rates are irrelevant to the Commission's decision
18 on Com Ed's delivery service rates in this case?

19 A. Bundled delivery service rates.

20 Q. I can elaborate. Isn't it true that we're
21 here to decide whether or not the delivery service
22 rates are adequate, that's the only issue in this

1 case, correct?

2 **A.** I think that that is the principle issue in
3 this case, yes.

4 **Q.** And those rates have not been frozen,
5 correct?

6 **A.** The delivery service tariff rates have not
7 been frozen, that is also correct.

8 MR. GIORDANO: All right. I would like to mark
9 BOMA Cross Exhibit No. 2.

10 BY MR. GIORDANO:

11 **Q.** I'm showing you what we've marked as BOMA
12 Cross Exhibit 2. This is a portion of rate RCDS,
13 Com Ed's rate RCDS, Retail Customer Delivery
14 Service rate. It says it was date effective
15 April 7, 2003 and it was issued by you, F.M. Clark
16 as president; isn't that correct?

17 **A.** Yes, that is correct.

18 **Q.** Now, isn't it true that this exhibit shows
19 that there have been increases in all of the
20 charges, charged to nonresidential delivery service
21 customers, that is the monthly customer charge, the
22 standard metering service charge and the

1 distribution facilities charge, on an annual basis,
2 since June 2003?

3 **A.** The answer is yes, although if you want me
4 to go line by line on this tariff sheet, I am not
5 the rate design expert, we do have witnesses that
6 I've introduced in my testimony who indeed are rate
7 discussion experts and would go over the sheet in
8 great detail.

9 **Q.** I think it speaks for itself.

10 MR. GIORDANO: I would like to move for the
11 admission of BOMA Cross Exhibit 2.

12 MR. BRADFORD: No objection, your Honor.

13 JUDGE DOLAN: Exhibit No. 2 will be admitted into
14 evidence.

15 (Whereupon, BOMA Cross
16 Exhibit No. 2 was marked for
17 identification and admitted into
18 evidence as of this date.)

19 BY MR. GIORDANO:

20 **Q.** So you would agree the issue relevant to
21 the Commission in making the decision in this case
22 is whether Com Ed's current delivery service rates,

1 which have been substantially increased every year
2 since 2003, provide a reasonable return on Com Ed's
3 distribution plan, correct?

4 **A.** No, I would say that the issue in this case
5 is whether Com Ed's revenues equal Com Ed's costs,
6 effective 1/1/07. In other words, whether our
7 revenue requirement meets the costs that Com Ed
8 will incur in order to continue to providing our
9 reliable electricity to 3.7 million customers.

10 **Q.** Right. The issue is whether these tariffs,
11 these existing tariffs, need to be increased to
12 provide Com Ed a reasonable return on its
13 distribution plan. Com Ed is still -- isn't that
14 correct?

15 **A.** The more correct statement, Mr. Giordano,
16 would be that all the tariffs that are applicable
17 to the delivery service -- the distribution
18 business in total, those tariffs provide a revenue
19 stream sufficient to meet Com Ed's costs and in
20 turn to allow Com Ed to continue to invest in the
21 upgrade and making the system. That would be
22 correct.

1 **Q.** But that tariff is rate RCDS, isn't it?

2 **A.** That is correct.

3 **Q.** So that's the tariff that's relevant, thank
4 you. I'll withdraw the last question.

5 **A.** You didn't --

6 **Q.** Go ahead.

7 **A.** There may in fact be other tariffs as I
8 indicated, I'm not the rate expert on every tariff
9 that is applicable in the delivery service case, we
10 do have witnesses that are. Clearly this is the
11 relevant tariff.

12 JUDGE DOLAN: Mr. Giordano, hold on, we are going
13 to switch court reporters.

14

15 (Change of reporters.)

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1 (Whereupon, there was a
2 change of reporter.)

3 JUDGE DOLAN: Go ahead and proceed,
4 Mr. Giordano.

5 MR. GIORDANO: Thank you.

6 Q. But you would agree that rate RCDS is your
7 retail customer delivery service tariff, correct?

8 A. Yes, I do.

9 Q. And there are no other tariffs before the
10 Commission that are relevant to the Commission's
11 decision in this case, any other delivery service
12 tariffs you may refer to as, what, a transmission
13 tariff that's provided by FERC?

14 A. As I indicated, there are other tariffs. I
15 can't tell you every other tariff that's applicable
16 for change as a result of the change in our
17 delivery service tariffs. There are witnesses who
18 will come after me who can.

19 Q. But this is the retail customer delivery
20 service tariff and it applies to -- my
21 understanding, and correct me if I'm wrong -- it
22 applies to all residential delivery service

1 customers and all nonresidential delivery service
2 customers, and that will mean it will apply to all
3 customers post 2007, correct?

4 **A.** That is correct.

5 **Q.** Thank you.

6 Please refer to Page 7, lines 146 to 147
7 of your direct -- I mean lines 146 through 147
8 where you testify that ComEd's proposed delivery
9 service tariffs advance important policy goals and
10 items from the Commission's post 2006 initiative,
11 correct?

12 **A.** Yes.

13 **Q.** Now, I'd like you to please refer to
14 Page 28 of the final report of the rates working
15 group of the post 2006 initiative which is attached
16 to your testimony as ComEd Exhibit 1.3, and I'd
17 like you to please refer to question and answer 48
18 on Page 28 of that report, the question and answer
19 related to delivery cost recovery and rate design.

20 Can you please refer to that?

21 **A.** Yes, I am looking at it now.

22 **Q.** Okay. And isn't it true that that answer

1 states that during any restructuring of rates to
2 accurately reflect the cost of providing delivery
3 and customer services, the Commission could --
4 should consider traditional rate design principles,
5 and the first three principles listed as
6 traditional rate design principles are
7 reasonableness, rate continuity, and avoidance of
8 rate shock; is that right?

9 A. Yes.

10 Q. Now, please refer to Pages 8 to 9, lines
11 186 to 187 of your direct where you testify that --

12 A. I'm sorry, where are you now?

13 Q. Page 8 of your direct, lines 186 to 187.

14 A. Okay.

15 Q. Where you testified that the rates filed by
16 ComEd in this proceeding are designed to be
17 consistent with and, where applicable, to implement
18 each of the consensus items; and one of the
19 consensus items you mentioned is rate design and
20 rate setting mechanisms, correct?

21 A. Yes.

22 Q. Now, isn't it true that despite this

1 statement, ComEd filed proposed tariffs in this
2 proceeding requesting a 133 percent increase from
3 \$2.34 per kilowatt to \$5.45 per kilowatt in
4 distribution facilities charges for consumers who
5 use -- who have peaks in electricity demand of over
6 10 megawatts?

7 **A.** I didn't do the math you just did, but
8 subject to check, let's assume that that math is
9 correct. And my response would be if that's the
10 way the arithmetic works, then that would be an
11 accurate statement.

12 **Q.** Do you believe that that proposed rate
13 filing is consistent with the traditional rate
14 design principles of reasonableness, rate
15 continuity, and avoidance of rate shock?

16 **A.** I believe that that is consistent with cost
17 of service analysis, and you would appropriately
18 allocate costs to the customers that, in fact,
19 drove that cost.

20 **Q.** But I asked you whether it's consistent
21 with these traditional rate design principles of
22 reasonableness, rate continuity, and avoidance of

1 rate shock?

2 MR. BRADFORD: Your Honor, I would ask that
3 Mr. Giordano read the entire sentence as opposed to
4 just a clause out of it because the predicate to it
5 says the rates working group reached consensus that
6 during any restructuring of rates to accurately
7 reflect the actual costs to providing delivery and
8 customer services. I think that that context is
9 important.

10 MR. GIORDANO: I did read that. We can go back
11 and check the transcript. That's exactly what I
12 said. I read that during any restructuring rates
13 to accurately reflect the actual costs of providing
14 delivery and customer services, the Commission
15 should consider, and so forth.

16 THE WITNESS: That is why I responded the way I
17 did, Mr. Giordano, that, in fact, I think that our
18 rate design -- again, the rate design expert will
19 follow me in testimony and you can direct these
20 questions at that gentleman -- but I believe that
21 the rates proposed in this filing do, in fact,
22 follow the principles that you're describing, and

1 they do accurately reflect the cost of service.
2 And the allocation of that cost is appropriately
3 distributed through the rate design proposed in
4 this case.

5 MR. GIORDANO: Q So you think that a 133
6 percent rate increase avoids rate shock?

7 A. I think that the cost drivers are the cost
8 drivers and that in order to provide reliable
9 electricity, in order to continue to have the
10 adequate resources to invest in the infrastructure
11 so that we can continue providing reliable
12 electricity requires us to recover the costs from
13 the cost drivers, yes, I do.

14 Q. But the rates that were in effect now were
15 proposed by ComEd and approved by the Commission,
16 correct, the \$2.34 rate --

17 A. Yes.

18 Q. -- was proposed by ComEd and approved by
19 the Commission?

20 A. That is correct.

21 Q. That was in 2003, correct?

22 A. That is correct.

1 **Q.** Do you agree that nonresidential consumers
2 who heat their facilities with electricity would
3 receive much larger overall rate increases than
4 nonresidential non space heating customers if
5 ComEd's proposed tariffs are approved?

6 **A.** I believe that is a correct statement, but
7 I'm going to also add that if you want to get into
8 specific discussions of rate design, I do not
9 purport to be a rate design expert. I'm generally
10 familiar with the tariffs that are being proposed,
11 and the answer to your question is yes. I believe
12 that Paul Crumrine and others are rate design
13 experts.

14 **Q.** Let me refer you to BOMA's Cross Exhibit 4.
15 This is a portion of your cross-examination in ICC
16 Docket number -- 3, sorry, BOMA Cross Exhibit 3.
17 It's a portion of your cross-examination in ICC
18 Docket No. 05-0159, also known as the procurement
19 case.

20 This is Pages 217 and 218 of your
21 testimony in ICC Docket No. 05-0159, correct?

22 **A.** Yes, it is.

1 **Q.** Now, you testified in that case, did you
2 not, that the question of rate shock -- this is
3 Page 217, line 20, through Page 218, line 9 -- that
4 the question of rate shock for nonresidential space
5 heating customers can be more appropriately
6 addressed when ComEd files their delivery services
7 rate filing and that the issue will be more
8 properly debated and discussed in that docket,
9 correct?

10 **A.** Yes.

11 **Q.** Isn't it true that despite your testimony
12 to that effect in that prior case, ComEd has not
13 proposed any method of mitigating the rate shock
14 for nonresidential space heating consumers in this
15 proceeding?

16 **A.** In this proceeding, I believe that is a
17 correct statement.

18 MR. GIORDANO: Thank you, Mr. Clark.

19 Thank you. I have no further questions.
20 I'd like to move for the admission of BOMA's Cross
21 Exhibit 3.

22 JUDGE DOLAN: Any objection?

1 MR. BRADFORD: No objection.

2 JUDGE DOLAN: All right. BOMA Cross Exhibit

3 No. 3 will be admitted into evidence.

4 (Whereupon, BOMA Cross

5 Exhibit No. 3 was

6 admitted into evidence as

7 of this date.)

8 JUDGE DOLAN: Mr. Townsend, are you ready?

9 MR. TOWNSEND: Yes, your Honor. Thank you,

10 your Honors.

11 CROSS-EXAMINATION

12 BY

13 MR. TOWNSEND:

14 Q. Chris Townsend appearing on behalf of the

15 Coalition of Energy Suppliers.

16 Good morning, Mr. Clark.

17 A. Good morning, Mr. Townsend.

18 Q. If you could please turn your attention to

19 your direct testimony at lines 149 through 155.

20 Let me know once you've had a chance to review

21 that, please.

22 JUDGE DOLAN: Mr. Townsend, what page did you

1 say?

2 MR. TOWNSEND: It's Page 7 of 11 of the direct
3 testimony, lines 149 to 155.

4 THE WITNESS: Yes, I have just reviewed it.

5 MR. TOWNSEND: Q Based upon ComEd's experience,
6 would you agree that effective competition and
7 reliance upon markets result in lower cost utility
8 service for customers?

9 A. It is my belief that that is true, yes.

10 Q. Do you agree that effective competition in
11 the electric markets creates opportunities for new
12 products for customers?

13 A. I believe it creates many competitive
14 opportunities that would not otherwise exist
15 including the possibility of the new technology --
16 service gaps.

17 Q. Do you agree that effective competition in
18 the electric markets creates opportunities for new
19 services for customers?

20 A. Yes.

21 Q. Would you agree that ComEd's customers have
22 benefitted from the introduction of competition

1 into the retail electric market?

2 **A.** Yes, I believe they have benefitted very
3 much starting with not only frozen delivery rates
4 but also a 20 percent rate reduction that, to the
5 best of my knowledge, has resulted in close to
6 \$4 billion in savings over rates that would have
7 otherwise existed.

8 **Q.** Would you agree that commercial and
9 industrial customers have also benefitted from the
10 introduction of competition in the retail electric
11 market?

12 **A.** Yes. I don't have an actual number, but I
13 believe that they have saved literally hundreds of
14 millions of dollars over the last -- since the
15 enactment of the 1997 restructuring law because of
16 competition and having alternate supplies that they
17 can procure power from.

18 **Q.** Does ComEd want to bring the benefits of
19 competition to residential and small commercial
20 customers?

21 **A.** Yes.

22 **Q.** Would you agree that ComEd should adopt

1 policies that encourage the development of customer
2 choice for all Illinois consumers in your service
3 territory?

4 **A.** Yes.

5 **Q.** Why is it important for ComEd to adopt
6 policies that encourage the development of customer
7 choice?

8 **A.** Well, one would be following the 1997
9 restructuring law, the core of which was the belief
10 that competitive -- that competition would provide
11 greater efficiencies and gradually lower prices for
12 all customers including, obviously, the residential
13 customers.

14 **Q.** Would you agree that to further the goal of
15 advancing customer choice that it is appropriate
16 for ComEd to adopt policies and procedures that
17 maximize operational and administrative efficiency?

18 **A.** Yes.

19 **Q.** I'd like to turn your attention to your
20 direct testimony at lines 159 to 166. Let me know
21 once you've had a chance to review that.

22 **A.** Yes, I have reviewed it.

1 **Q.** Do you agree that in order for there to be
2 effective competition in the electric markets that
3 ComEd's supply costs must be reflected in the
4 generation component of ComEd's rates?

5 **A.** Yes.

6 **Q.** And, likewise, do you agree that in order
7 for there to be effective competition in the
8 electric markets that ComEd's delivery services
9 costs must be reflected in the delivery services
10 component of ComEd's rates?

11 **A.** Yes.

12 MR. KELTER: Objection, your Honor. This is
13 friendly cross.

14 MR. TOWNSEND: I hope that we can get agreement
15 that there should not be cross subsidies, but this
16 is one of the primary drivers of the testimony of
17 the Coalition of Energy Suppliers is that it's
18 important to remove these types of cross subsidies
19 from the rates that ComEd has introduced. And so
20 the fact that he agrees that this fundamental
21 principle is true, although we may have agreement
22 on that fundamental principle, we do have

1 disagreement as to whether or not the rates are
2 able to achieve that. That's the perspective of
3 the Coalition of Energy Suppliers. That's not
4 friendly cross.

5 JUDGE DOLAN: I will allow it, but -- go ahead
6 and proceed.

7 MR. TOWNSEND: Thank you.

8 Q. You would agree, Mr. Clark, that in order
9 for there to be effective competition there cannot
10 be cross subsidies from the generation component of
11 the rates to the delivery services component of
12 ComEd's rates, correct?

13 A. That is generally a correct statement. I
14 believe that the intent of the workshops and the
15 reports from the staff of the Commission and
16 others, as I recall them, made it very clear,
17 again, that the cost drivers -- that these costs
18 should be allocated by those customer classes that
19 actually create the costs.

20 Q. And that's true both -- that is true for
21 the separation between delivery services costs and
22 generation costs as well, correct?

1 **A.** That is correct.

2 **Q.** I'd like to turn your attention to your
3 Exhibit 1.2.

4 That is the final staff report regarding
5 the post 2006 initiative, correct?

6 **A.** Yes. Just give me a moment to find it.
7 Yes.

8 **Q.** Why have you included that staff report as
9 an exhibit to your testimony?

10 **A.** Well, the three exhibits including the 1.2
11 report of the Illinois Commerce Commission staff I
12 think affirms and continues to make a demonstration
13 of the effect of the Illinois restructuring law of
14 1997. It shows the benefits of competition that
15 will receive in all customer classes including the
16 residential class, and it -- as I recall, the
17 report goes on to continue to emphasize the
18 importance of having rates and tariffs and prices
19 that will continue to reflect the competitive
20 marketplace which ultimately is believed to be the
21 best long-term opportunities for lower rates for
22 residential consumers, all consumers, as well as

1 all the other benefits that local -- the
2 competitive marketplace.

3 Q. Does ComEd generally agree with staff's
4 conclusions that are reflected in that staff
5 report?

6 A. Yes.

7 Q. And there are provisions in the staff
8 report that relate directly to residential
9 competition?

10 A. Yes, there are.

11 Q. I direct your attention to the report
12 beginning at Page 32. Let me know once you've had
13 a chance to review that segment.

14 A. Are you one or two or the -- what did you
15 say?

16 Q. The section that begins at Page 32.

17 MR. BRADFORD: Roman numeral two, Mr. Townsend,
18 status of and prospects of residential retail
19 competition?

20 MR. TOWNSEND: That's correct.

21 Q. I guess specifically if you could please
22 turn your attention to the section that begins on

1 Page 34 also entitled section A, the potential
2 measures to interest suppliers in serving
3 residential customers.

4 A. Okay.

5 Q. The third sentence in that section reads,
6 quote, some means must be found to encourage
7 suppliers to enter the market if residential
8 competition is ever going to get off the ground.

9 Do you see that?

10 A. Yes, I do.

11 Q. Do you agree with that conclusion?

12 A. Yes.

13 Q. If I could turn your attention to Page 35
14 of the report, the second paragraph, do you see the
15 first sentence that reads, quote, the most useful
16 information about the potential for residential
17 competition might come from examining the
18 experience in other states and from the residential
19 natural gas choice programs in Illinois, unquote?

20 A. Yes, I see that.

21 Q. Do you agree with that conclusion?

22 A. Yes, I do.

1 **Q.** ComEd has a sister company with utility
2 operations in Pennsylvania, correct?

3 **A.** Yes.

4 **Q.** And by the end of the year, ComEd likely
5 will have another sister company with utility
6 operations in New Jersey, correct?

7 **A.** I hope so.

8 **Q.** Would you agree that it would be useful to
9 examine the experiences that those companies have
10 had with residential competition to inform the
11 Commission regarding policies that might encourage
12 residential competition?

13 **A.** Yes, I do.

14 **Q.** Do you see the next paragraph of the
15 report; it begins, quote, several characteristics
16 of the natural gas choice programs that seem to
17 have attractive ARGS, alternative retail gas
18 suppliers, to the small volume natural gas market
19 may be applicable to the small volume electric
20 market, unquote?

21 **A.** Yes.

22 **Q.** Do you agree with that conclusion?

1 **A.** I can't say that I'm fully -- I'm not that
2 knowledgeable on gas -- on the gas markets. The
3 statement seems correct, though.

4 **Q.** And in that paragraph, the report discusses
5 aspects of the natural gas market that may be able
6 to attract alternative retail electric suppliers to
7 Illinois likewise, correct?

8 **A.** Yes, it does.

9 **Q.** And the second recommendation is that, or
10 observation, is, quote, natural gas utilities offer
11 billing services for ARGs, which the majority of
12 the ARGs utilize. The fact that electric utilities
13 do not offer these services is likely to -- is
14 likely a factor discouraging suppliers from
15 entering the market, unquote.

16 Do you see that?

17 **A.** Yes, I do.

18 **Q.** Do you have any basis to dispute that
19 conclusion?

20 **A.** I don't know that I agree with it; but,
21 again, that's not an area where I feel I have
22 knowledge.

1 Q. Have you presented any evidence disputing
2 that conclusion?

3 A. Not that I'm aware of.

4 Q. Do you have any basis to dispute that
5 conclusion?

6 A. I don't have any basis to agree or
7 disagree.

8 MR. TOWNSEND: Nothing further, your Honors.

9 JUDGE DOLAN: Mr. Jolly?

10 MR. JOLLY: The City has nothing.

11 JUDGE DOLAN: Does the Cook County State's
12 Attorney?

13 MR. KAMINSKI: No cross.

14 JUDGE DOLAN: CES, Mr. Robertson -- that was
15 you. Okay. So you're the only one left, I guess.

16 CROSS-EXAMINATION

17 BY

18 MR. ROBERTSON:

19 Q. Still good morning, Mr. Clark.

20 A. Good morning, Mr. Robertson.

21 Q. My name is Eric Robertson. I represent the
22 Illinois Industrial Energy Consumers in this

1 proceeding.

2 I wanted to ask you about a portion of
3 your direct testimony at Page 6, lines 138 to 140,
4 which I think you've already discussed.

5 A. Yes.

6 Q. There you state that ComEd has a source or
7 had a source of revenues during the transition
8 period which were designed to particularly -- or
9 partially mitigate stranded costs; is that correct?

10 A. That is correct.

11 Q. Now, is it correct that you are continuing
12 to receive some of those revenues and will continue
13 to receive them through the end of this year?

14 A. That is correct.

15 Q. And when you use the term stranded costs,
16 what type of costs were you referring to?

17 A. Any of the costs that we would have
18 collected over a multiple number of years that we
19 don't have the opportunity to collect in a much
20 more constrained, much shorter transition period;
21 all of our costs with planned investments, et
22 cetera.

1 **Q.** And would you agree with me that the
2 primary element of stranded cost was the company's
3 investment in its generating capacity?

4 **A.** That was a large piece of it.

5 **Q.** And is it also correct to say that the
6 company no longer owns generation?

7 **A.** That is correct.

8 **Q.** So going forward, there will be no stranded
9 costs to recover associated with generation; is
10 that correct?

11 **A.** That is correct.

12 **Q.** What were the specific sources of revenue
13 which you reference in your testimony?

14 **A.** The principal source of revenue that I was
15 referring to is the loss of the CTC which will
16 occur at the end of -- at the end of this year.
17 And, again, there are other expert witnesses who
18 will follow me that can go into greater detail.

19 The 1997 law, I believe it is called the
20 lost revenue formula, something close to that, said
21 the transitional period was intended to make
22 utilities in the state essentially whole and

1 provide an opportunity to recover or mitigate as
2 much of their stranded costs, stranded investments
3 that they could.

4 **Q.** Part of the mitigation that the company
5 undertook was the transfer of its nuclear and
6 fossil units?

7 **A.** That is correct, the transfer of our
8 nuclear reactor to solar and fossil.

9 **Q.** And the charge that you referred to as the
10 lost revenue charge, that's known as the
11 competitive transition charge?

12 **A.** That is correct.

13 **Q.** And that competitive transition charge is
14 determined on the basis of the -- by taking the
15 revenue the company would have likewise perceived
16 under its fully bundled rates from the customer and
17 deducting from that revenue the revenue the company
18 receives for delivery service; is that correct?

19 **A.** I believe, Mr. Robertson, that is how the
20 formula works.

21 **Q.** And also deducted from that revenue is
22 something called the statutory mitigation factor?

1 **A.** That is also correct.

2 **Q.** And also deducted from that revenue was a
3 an additional element known as the market value; is
4 that correct?

5 **A.** Yes.

6 **Q.** Now, isn't it true that under that formula
7 if the company did not lose any revenue it did not
8 recover a transition charge?

9 **A.** Yes.

10 **Q.** And would you agree with me that the
11 company has approximately 3.6 million customers?

12 **A.** Yes.

13 **Q.** Would you agree with me that approximately
14 21,000 of those customers have elected to take
15 service from a supplier other than the company?

16 **A.** I don't know the exact number anymore.
17 That sounds very reasonable.

18 **Q.** So the company has lost revenue associated
19 with 21,000 customers and retained the full revenue
20 associated with the remaining 3.6 million?

21 **A.** As you know, the 21 -- assuming the 21,000
22 number is correct, that is a substantial portion of

1 our overall load. So the revenues that were
2 affected would not have been small.

3 Q. And is it true now that for the most part
4 customers are not paying the transition charge who
5 are on delivery service?

6 A. I'm going to answer that, but I'll answer
7 it with a caveat, again, I believe witnesses like
8 Paul Crumrine will have better command of the
9 specifics. But generally I think your statement is
10 true.

11 Q. And the reason for that is in this formula
12 if the market value exceeds the bundled service
13 rate, the market value of the formula, then the
14 company would not recover any transition charge; is
15 that correct?

16 A. That is correct.

17 Q. And when the market value exceeds the
18 bundled service rate, that means that the cost of
19 power and energy exceeds the bundled rate, isn't
20 that correct, in the market?

21 A. Yes.

22 Q. And if the -- taking the company as a whole

1 and its affiliates, would it be true to say that
2 when the market value exceeds the bundled service
3 rate the company is not losing any revenue?

4 **A.** Taken as a whole, Exelon Generation would
5 not be losing in that scenario.

6 **Q.** Now, I think at Page 6, lines 137 and 138
7 of your testimony, you discuss the need for the
8 company to obtain sufficient revenues to pay for
9 investment and assets to provide delivery service;
10 is that correct?

11 **A.** That is correct.

12 **Q.** Now, do you believe that the company's
13 rates should be designed such that the company
14 recovers costs that are not associated with
15 providing delivery service?

16 **A.** I think I understand your question,
17 Mr. Robertson, so I'll answer it and tell you how
18 I'm answering it.

19 I believe that Commonwealth Edison as a
20 regulated utility has an obligation to serve, and
21 that obligation to serve requires it to recover
22 from its customers the cost of providing service.

1 And our tariffs should reflect the total costs of
2 providing that service associated with the
3 obligation to serve.

4 Q. And the service that we're speaking of in
5 this particular case is delivery service?

6 A. We're talking at this point specifically
7 the delivery charges.

8 Q. So you would then agree with me that those
9 rates should be designed to specifically allow the
10 company to recover the cost of providing delivery
11 service, not providing telephone service, for
12 example?

13 A. Yes.

14 Q. And the rates should be set to recover the
15 costs associated with investing in the assets
16 needed to provide that delivery service; is that
17 correct?

18 A. Yes.

19 Q. And they shouldn't reflect investment
20 associated with other aspects which are not used in
21 providing delivery service; would you agree with
22 that?

1 **A.** I agree with what you're saying. I'm not
2 exactly sure of how you mean it, but your statement
3 appears correct.

4 **Q.** Now, at Page 8, lines 164 to 165 of your
5 direct testimony, you talk about the fact that the
6 proposed tariffs in this case facilitate efficient
7 retail competition; is that correct?

8 **A.** Yes.

9 **Q.** Now, one of the reasons as I understand
10 your testimony -- you can correct me if I'm
11 wrong -- that you believe that these rates promote
12 efficient retail competition is the implementation
13 of the company's competitive procurement
14 methodology; is that correct?

15 **A.** When you -- yes, in total, yes.

16 **Q.** And are you familiar with ComEd's rider
17 CPP-A?

18 **A.** In a general sense, yes, of course.

19 **Q.** And CPP-A is a -- one of the products that
20 will be furnished as a result of the auction; is
21 that correct?

22 **A.** That is correct.

1 **Q.** And that is annual fixed price product; is
2 that correct?

3 **A.** That is correct.

4 **Q.** Now, do you believe that efficient
5 competition is promoted by the availability of that
6 product through the auction?

7 **A.** Yes.

8 **Q.** And why do you believe that?

9 **A.** Well, again, I'll give you my explanation,
10 but you can follow up and get more detail from
11 people like Bill -- I believe Bill McMillan
12 (phonetic) will testify, who are market experts. I
13 don't purport to be a market expert. But I believe
14 that the auction itself which will provide choice
15 of supply to the wholesale level to all of our
16 customers, even indirectly our residential
17 customers, will provide the lowest possible costs
18 they've passed through to those customers. That's
19 a general statement. And providing an opportunity
20 for a fixed price tariff for the customers who have
21 the opportunity to need to use it is, I think, an
22 additional safeguard.

1 **Q.** Do you believe that it will promote
2 efficient competition because it is based on the
3 market price of electricity?

4 **A.** Pardon me.

5 **Q.** Do you believe --

6 **A.** No, I was coughing.

7 **Q.** Do you believe that the auction will
8 promote efficient competition because it produces a
9 price that is based on the market price of
10 electricity?

11 **A.** Yes.

12 **Q.** Do you believe that third party suppliers
13 will have the opportunity to compete against that
14 kind of price?

15 **A.** Yes.

16 **Q.** Now, at Page 11 of your direct testimony,
17 lines 263 to 265, you suggest that the proposed
18 rates in this case will provide ComEd with funds
19 needed to provide reasonably priced electric
20 service; is that correct?

21 **A.** Yes.

22 **Q.** What do you mean by reasonably priced

1 there?

2 **A.** By that I mean the lowest price option
3 resulting from a competitive process; in this case,
4 the reverse auction that's being proposed.

5 **Q.** And did you have in mind reasonably priced
6 delivery rates when you made that statement or just
7 the prices from the competitive auction?

8 **A.** No. It's intended to cover the prices that
9 are passed through our rates in total to our
10 customers.

11 **Q.** Now, is part of the concept of a reasonably
12 priced product the idea that the price is stable
13 over time as well?

14 **A.** Yes.

15 **Q.** And why would it be important to offer
16 customers a product that was stably priced?

17 **A.** Well, when I said yes, I mean stability in
18 the sense that the -- we're focusing strictly on
19 the delivery component -- cost that we're passing
20 on that have been found to be just and reasonable
21 prudently incurred costs and no other costs.

22 **Q.** At this location in your testimony, you

1 were talking about both delivery service and the
2 power procurement auction; is that correct?

3 A. Yes.

4 Q. And the power procurement auction secures
5 the commodity component of the bundled service rate
6 for ComEd's customers; is that correct?

7 A. Correct.

8 Q. You believe it is important to provide
9 customers with stability vis-a-vis prices in
10 relation to that commodity product?

11 A. Yes.

12 Q. Now, would you agree with me that there are
13 customers on the ComEd system who will not have
14 access to that product under the ComEd approach?

15 A. Restate your question.

16 Q. Let me ask specifically. I won't be so
17 facetious about it.

18 Would you agree with me that all the
19 customers 3 megawatts and over will not have access
20 to that stably priced product --

21 A. The product that you referred to before?

22 Q. That's correct.

1 **A.** That is correct.

2 **Q.** Now, as I understand it, it is your
3 position that ComEd is currently earning a return
4 on rate base; is that correct?

5 **A.** That is correct.

6 **Q.** And your testimony also suggests that you
7 need to recover the level of revenues requested in
8 your rates because you need those to provide safe
9 and reliable service; is that correct?

10 **A.** That is correct.

11 **Q.** Now, has ComEd been in your -- how long
12 have you been with the company?

13 **A.** 40 years.

14 **Q.** Has ComEd been able to provide safe and
15 reliable service over that period of time?

16 **A.** I'd like to think so.

17 **Q.** Now, would you agree with me that at the
18 Commission or the Commission staff in this case has
19 actually proposed a roughly \$30 million decrease in
20 ComEd's delivery service rates; is that correct?

21 **A.** Yes, that is my recall.

22 **Q.** Now, would you agree with me that in 1983

1 ComEd entered into a settlement and approved by the
2 Commission establishing just and reasonable rates
3 which produced a refund and rate reductions of \$1.2
4 billion?

5 A. Subject to check, I would agree with that.

6 Q. And ComEd was able to provide safe and
7 reliable service even in the face of a \$1.2 billion
8 rate reduction and rate decrease; is that correct?

9 A. That is correct, but it was also followed
10 by subsequent rate increases.

11 Q. And as I understand it, as part of the
12 company's mitigation approach in disposing of its
13 generating units, it believed that it was reducing
14 its regulatory and pricing risk; is that correct?

15 A. I'm sorry, reask the question.

16 Q. Well, you indicated earlier today that the
17 fact that the company -- that there was regulatory
18 pricing risk associated with the company's
19 ownership of its generating units; is that correct?

20 A. That is correct.

21 Q. And was that -- what was the regulatory
22 risk that you were speaking of?

1 **A.** Well, I said risks, as I recall, both to
2 the company and its customers. There were a number
3 of reasons why -- is your question why we chose to
4 move our nuclear power plants --

5 **Q.** No. What -- when you use the term
6 regulatory risk, what were you speaking of?

7 **A.** A number of things. All the cost
8 uncertainty associated with the fossil -- with the
9 nuclear plant, the decommissioning costs, our
10 retrofitting costs, and frankly the fact that the
11 plants had not run particularly efficiently up
12 until virtually the mid 1990s and the feeling --
13 the thought process then, as I recall, was that
14 putting those plants in a competitive environment
15 was the best way to either run them well or shut
16 them down. And that was right around the time
17 when, in fact, we shut down the Zion nuclear power
18 plant.

19 So I was speaking of risks to our
20 consumers as much as ultimate risk to the company.
21 Those risks were then moved from our customers
22 really onto the unregulated ex-gen that was also

1 created.

2 Q. They were also moved from ComEd to its
3 unregulated affiliate?

4 A. Exactly.

5 Q. And the pricing risk faced by ComEd and its
6 customers associated with the generating units,
7 what was that?

8 A. Just the uncertainty of continuing our rate
9 increases associated with, in some cases,
10 unacceptably low performance.

11 Q. Now, would you agree with me that the power
12 procurement methodology you reference in your
13 testimony will mean that suppliers of the auction
14 product will manage all risk associated with
15 serving ComEd's load including volumetric risk,
16 migration risk, and congestion costs?

17 A. I believe that is a correct statement.

18 Q. Now, at Page 7 beginning at line 149, you
19 discuss the belief that the benefits of effective
20 competition -- your belief in the benefits of
21 effective competition have been borne out; is that
22 correct?

1 **A.** Yes.

2 **Q.** Or words to that effect.

3 You mentioned 4 billion in savings in
4 response to Mr. Townsend. My question to you is:
5 Roughly 3 billion of that was related to the
6 residential rate reduction, wasn't it?

7 **A.** At least that much, yes.

8 **Q.** And the remainder was a function in part
9 of -- that was mandated by the legislature as part
10 of the adoption of the 1997 law; is that correct?

11 **A.** That is correct. A 20 percent rate
12 reduction for residential customers, yes.

13 **Q.** And also mandated, would you agree, that
14 another substantial portion of the remaining amount
15 had to do with the statutory mitigation factor?

16 **A.** Yes.

17 **Q.** And that was mandated by the legislature;
18 is that correct?

19 **A.** That is also correct.

20 **Q.** So neither one of those were directly
21 associated with competition; is that correct?

22 **A.** That's technically correct, but they would

1 not have been put in place if the State were not
2 willing to move towards a competitive model for
3 supply.

4 MR. ROBERTSON: I have nothing further. Thank
5 you, Mr. Clark.

6 THE WITNESS: Thank you.

7 JUDGE DOLAN: Anyone else have any questions for
8 Mr. Clark?

9 All right. Thank you, Mr. Clark. You
10 may step down.

11 MR. BRADFORD: Your Honor, just have one area of
12 redirect.

13 JUDGE DOLAN: I'm sorry. Sure.

14 REDIRECT EXAMINATION

15 BY

16 MR. BRADFORD:

17 Q. Mr. Clark, you remember Mr. Giordano asked
18 you a series of questions about delivery rate
19 increases, standard metering increases.

20 Do you remember that line of questions?

21 A. Yes, I do.

22 Q. For ComEd's bundled customers, that is,

1 customers that took both delivery and supply from
2 ComEd, did they pay any increase in their rates as
3 a result of those delivery rate increases?

4 **A.** They did not.

5 **Q.** Why did those customers -- what percentage
6 of ComEd's customers were bundled customers during
7 that period of time?

8 **A.** About 3 and a half million versus 20 or
9 30,000 that -- of our largest customers who chose
10 other suppliers.

11 **Q.** Why is it that despite those delivery rate
12 increases the vast majority of ComEd's customers
13 did not pay any increase in rates and ComEd did not
14 receive any increase in revenues?

15 **A.** Because there was a statutory rate freeze
16 that was enacted in the 1997 restructuring law; and
17 for the residential customers in addition to the
18 freeze, there was a 20 percent rate reduction also
19 in, I believe, 1995 rates.

20 **MR. BRADFORD:** I have nothing further, your
21 Honors.

22 **MR. GIORDANO:** I have a few questions related to

1 that.

2 RECROSS-EXAMINATION

3 BY

4 MR. GIORDANO:

5 Q. Regardless of whether certain ComEd
6 customers paid the delivery service rate increases,
7 those delivery service rate increases every year
8 till 2003 through 2006 still occurred, correct?

9 A. Yes, they did.

10 Q. And isn't it true that the delivery service
11 rate increase that you're asking for in this case
12 is on top of those increases that have already
13 happened to ComEd's delivery service rates?

14 A. That is correct.

15 MR. GIORDANO: Nothing further.

16 JUDGE DOLAN: Thank you.

17 MR. BRADFORD: Nothing else, your Honors.

18 JUDGE DOLAN: All right. Thank you.

19 Mr. Costello, we have till -- we have
20 our court reporter till 12:15, so we can either
21 start and then break for -- take a break at 12:15.

22 MR. RIPPPIE: Your Honors, I was going to ask if

1 I could take three or four minutes.

2 JUDGE DOLAN: We'll take a short break.

3 JUDGE HALOULOS: 10 minutes.

4 MR. RIPPIE: There are a couple crosses of

5 Mr. Costello that are scheduled for very short

6 periods of time. If the parties wouldn't mind, we

7 might able to fit those in while we still have the

8 reporter.

9 JUDGE DOLAN: Okay. Take a ten-minute break.

10 (Whereupon, a short break was taken.)

11 JUDGE HALOULOS: Back on the record now.

12 I believe that Mr. Costello is scheduled

13 to testify next.

14 MR. RIPPIE: That is correct, your Honors.

15 Mr. Costello is present. Do you wish to swear him

16 now.

17 (Witness sworn.)

18

19

20

21

22

1 JOHN T. COSTELLO,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY

6 MR. RIPPIE:

7 **Q.** Could you please state and spell your full
8 name for the record.

9 **A.** John T. Costello, C-o-s-t-e-l-l-o.

10 **Q.** Mr. Costello, has surrebuttal testimony
11 been prepared by you or under your direction and
12 control for submission to the Illinois Commerce
13 Commission in this docket?

14 **A.** Yes.

15 **Q.** Is that prefiled surrebuttal testimony
16 designated ComEd Exhibit 30.0?

17 **A.** Yes.

18 MR. RIPPIE: For the record, your Honor, ComEd
19 30.0 was filed on E Docket through docket -- under
20 E Docket No. 166359.

21 **Q.** Mr. Costello, are there any additions or
22 corrections that you wish to make to ComEd

1 Exhibit 30?

2 A. No.

3 Q. If I were to ask you the same questions
4 that appear in ComEd Exhibit 30 today, would you
5 give me the same answers?

6 A. Yes, I would.

7 Q. Has prefiled rebuttal testimony also been
8 prepared by you or under your direction and control
9 for submission to the Commission in this case?

10 A. Yes.

11 Q. Is that prefiled rebuttal testimony
12 designated ComEd Exhibit 13 Corrected?

13 A. Yes, it is.

14 Q. Are there attached to that testimony
15 Exhibits 13.1 and 13.2?

16 A. Yes.

17 MR. RIPPIE: For the record, your Honors, ComEd
18 Exhibit 13 Corrected and Exhibits 13.1 and 13.2,
19 the former of which has both a confidential and
20 public version, have been filed on the E Docket
21 system. 13.0 Corrected is No. 166755, 13.1 is
22 162090, and 13.3 is 162092. We also have hard

1 copies of that document available if the parties
2 have not received it. It was, I believe, filed on
3 either Friday or yesterday.

4 JUDGE DOLAN: Mr. Rippie, did you say 13 --
5 there was 13.1 and 13.2, right?

6 MR. RIPPIE: Yes.

7 JUDGE DOLAN: You said 13.3 when you identified
8 the document, so I just wanted to...

9 MR. RIPPIE: I apologize, sorry.

10 JUDGE DOLAN: That's okay. Just trying to keep
11 it straight.

12 MR. RIPPIE: It's 13.0 is the testimony, and the
13 exhibits are .1 and .2.

14 JUDGE DOLAN: Thank you.

15 MR. RIPPIE: Q Other than as updated in your
16 surrebuttal testimony ComEd Exhibit 30, are there
17 any corrections or revisions you wish to make to
18 Exhibit 13.0 Corrected?

19 A. No.

20 Q. If I were to ask you the same questions
21 that appear on that exhibit today, would you give
22 me the same answers?

1 **A.** Yes, I would.

2 **Q.** Has prefiled direct testimony also been
3 prepared by you or under your direction and control
4 for submission to the Commission in this docket?

5 **A.** Yes.

6 **Q.** Is that ComEd Exhibit 3.0 including the
7 appendix thereto?

8 **A.** Yes.

9 MR. RIPPPIE: Your Honors, for the record that
10 was filed on E Docket with serial number 158559.

11 **Q.** Mr. Costello, other than as updated in your
12 surrebuttal and rebuttal testimony, are there any
13 corrections or revisions that you wish to make to
14 your prefiled direct?

15 **A.** No, there's not.

16 **Q.** Subject to those corrections in rebuttal
17 and surrebuttal, if I were to ask you the same
18 questions that appear in ComEd Exhibit 3.0 today,
19 would you give me the same answers?

20 **A.** Yes.

21 MR. RIPPPIE: Your Honors, that's all the
22 questions I have for Mr. Costello, and I would

1 offer into evidence at this time ComEd Exhibit 3.0,
2 13.0, 13.1, confidential and 13.1 public, 13.2, and
3 30.0.

4 JUDGE HALOULOS: ComEd exhibits shall be entered
5 into the record, 13.0, 13.1, 13.2, 3.0.

6 MR. RIPPIE: And 30.0.

7 JUDGE HALOULOS: And 30.0.

8 (Whereupon, ComEd
9 Exhibit Nos. 13.0, 13.1, 13.2,
10 3.0, 30.0 were
11 admitted into evidence as
12 of this date.)

13 MR. RIPPIE: Thank you, your Honors.

14 MR. GARG: Your Honor, the Attorney General's
15 Office can proceed with cross if that's okay.

16 JUDGE DOLAN: Proceed.

17 CROSS-EXAMINATION

18 BY

19 MR. GARG:

20 Q. Hello, Mr. Costello. My name is Rishi
21 Garg, and I work for the Office of the Attorney
22 General.

1 **A.** Hi.

2 **Q.** Can you refer to the bottom of Page 34 of
3 your rebuttal testimony.

4 Is this where you address Mr. Effron's
5 proposed adjustment to number of employees?

6 **A.** Yes, it is.

7 **Q.** Do you state beginning on line 776 that it
8 is not surprising that the number of employees was
9 lower in September 2005 than it was in 2004 because
10 the number of employees varies from month to month?

11 **A.** That's correct.

12 **Q.** I'd like to refer you to company schedule C
13 dash 11.2 A.

14 Your Honors, I have questions with
15 regards to Page 1 of this schedule. It is not a
16 cross exhibit. However, the schedule itself is 130
17 pages. For the convenience of your Honors and
18 counsel, we've provided one copy -- two copies of
19 the entire schedule. For the rest of the parties,
20 we've copied just Page 1.

21 Thank you. Referring to the schedule,
22 as of December 2004, were there 5,539 approximately

1 full-time equivalent employees?

2 **A.** Yes.

3 **Q.** Now I'd like to refer you to the response
4 to AG 10.01, and I'll mark it as Cross Exhibit 2,
5 AG Cross Exhibit 2. I'll refer you to just Page 1
6 of 25.

7 Are you familiar with this response?

8 **A.** I'm not familiar with it.

9 **Q.** Did you, however, provide testimony as to
10 employee levels?

11 **A.** Yes, I did.

12 **Q.** Referring you to the response to AG 10.01,
13 isn't it true that for every month from April 2005
14 through December 2005, the number of full-time
15 equivalent employees was lower than the number as
16 of December 2004?

17 **A.** Yes, it is.

18 **Q.** On Page 35 of your rebuttal testimony at
19 line 782 to 785, do you note that the number of
20 employees as of the end of 2005 was within 1
21 percent of year end 2004 levels?

22 **A.** That's correct.

1 **Q.** Isn't it true that the year end 2004 level
2 was below the average level of 2004 employees?

3 **A.** Could you ask me that question again.

4 **Q.** Sure.

5 Isn't it true that the year end 2004
6 level was below the average level of 2004
7 employees?

8 **A.** There's no averaging here for 2004, so I
9 can't do it without doing the math.

10 **Q.** Can I offer you a calculator -- can I offer
11 it to you subject to check?

12 **A.** Certainly.

13 **Q.** Thank you.

14 Isn't it also true that the year end
15 2005 level of employees was below the average level
16 of employees for the six months ending September
17 2005, the period that Mr. Effron used to quantify
18 his adjustment?

19 **A.** Again, I would have to go back and average
20 the six months of 2005; but it looks to me like
21 they're very close to one another.

22 **Q.** Would you agree subject to check that the

1 six month average is 5,482?

2 **A.** Are you looking at the total full-time
3 equivalence number?

4 **Q.** Yes.

5 **A.** Subject to check, I would accept your math.

6 **Q.** At lines 789 to 792 on Page 35 of your
7 rebuttal testimony, do you suggest that you
8 employee complement proposed by Mr. Effron would
9 not enable ComEd to, quote, keep the lights on?

10 **A.** I would say that my comments really would
11 be that it would prevent us from adding additional
12 employees which could have future impact on our
13 reliability. For example, right now I have 54
14 people in construction schools at ComEd. I'll be
15 adding 15 more next week. Imposing a cap on hiring
16 would restrict me from making those kinds of
17 staffing additions.

18 **Q.** Do you state on line 791 and 792 that you
19 state it means that ComEd would not be able to hire
20 the employees it wants to hire to keep the lights
21 on?

22 **A.** That's correct, I do state that.

1 **Q.** Did ComEd keep the lights on during the six
2 months ending September 30, 2005?

3 **A.** Keeping the lights on is a very relative
4 term, so explain to me what you mean by keeping the
5 lights on.

6 **Q.** I'm referring to the statement that you
7 made on line 791 and 792.

8 **A.** The focus of my job is always to improve
9 the reliability service to our customers. That is
10 what I strive very, very hard to do. The point
11 here was imposing a cap on employment could impair
12 our future ability to improve upon our reliability.

13 MR. GARG: I'd like to move to enter AG Cross
14 Exhibit 2 into the record, and then I have no more
15 questions for Mr. Costello.

16 JUDGE HALOULOS: AG Cross Exhibit 2 will be
17 entered into the record.

18 Is there any objection to that?

19 MR. RIPPIE: No, there's not, your Honor.

20 (Whereupon, AG Cross
21 Exhibit No. 2 was
22 admitted into evidence)

1 JUDGE DOLAN: Mr. Nickerson, are you going to do
2 cross for company or is Mr. Kelter?

3 MR. NICKERSON: No, I had not planned on doing
4 cross-examination.

5 JUDGE DOLAN: Mr. Jolly, are you ready to go?

6 MR. JOLLY: Sure.

7 CROSS-EXAMINATION

8 BY

9 MR. JOLLY:

10 Q. Good afternoon, Mr. Costello. My name is
11 Ron Jolly, and I'm representing the City of
12 Chicago. I just want to follow up on something
13 Mr. Garg just asked you, and I was just trying to
14 understand your answer to his question.

15 I believe you stated that imposing a cap
16 on employees would -- might impair reliability.

17 Is that a fair characterization of what
18 you said?

19 A. That's correct.

20 Q. Is it your testimony that if the Commission
21 were to adopt Mr. Effron's adjustment that ComEd
22 would not be able to hire more employees than

1 Mr. Effron says are appropriate?

2 **A.** I think the Commission will make that
3 judgment. All I was reacting to was Mr. Effron's
4 proposal that seemed to be that there should be a
5 cap on employment.

6 **Q.** Is that -- does Mr. Effron state that there
7 should be a cap on employment?

8 **A.** No. I'm interpreting what his argument
9 was.

10 **Q.** Or is it Mr. Effron's testimony that ComEd
11 should be allowed to recover costs for a certain
12 number of employees?

13 **A.** I think those are one and the same.

14 **Q.** So it's your testimony that Mr. Effron is
15 saying that ComEd should not have no more employees
16 than are stated in his testimony?

17 **A.** That's correct.

18 MR. JOLLY: I have nothing further.

19 JUDGE DOLAN: Thank you.

20 JUDGE HALOULOS: Does anybody else have a short
21 cross?

22 MR. REDDICK: Conrad Reddick for IIEC.

1 CROSS-EXAMINATION

2 BY

3 MR. REDDICK:

4 Q. Good morning, Mr. Costello. Conrad Reddick
5 for IIEC.

6 A. Good morning.

7 Q. In a number of places in your testimony,
8 you emphasize the point that the costs that you are
9 recommending the company be allowed to recover are
10 the actual costs incurred.

11 Do you recall those sections of your
12 testimony?

13 A. I do.

14 Q. You do recognize there is a distinction
15 between the issue of whether costs -- whether the
16 costs actually incurred were accurately counted on
17 one hand and whether the amount actually incurred
18 were reasonable and prudently incurred on the
19 other?

20 A. Well, we have submitted in parts of our
21 testimony what the actual costs are that we
22 extended, and we believe they are all prudently

1 incurred and used and useful at this point in time.

2 Q. I understand that you believe that they
3 are, in fact, prudently incurred and reasonable,
4 but you do recognize that there are two issues
5 there?

6 A. Yes.

7 Q. So in your testimony when you say no one
8 has challenged your numbers, you're not suggesting
9 that all costs accurately counted are for that
10 reason alone reasonable and prudent?

11 A. The reason I made the statement I did is I
12 did not see testimony from anyone that questioned
13 the prudence nor the reasonableness of the actual
14 costs that we submitted.

15 Q. You saw no testimony challenging the
16 prudence of any of the costs --

17 A. On the reasonableness of it or the prudence
18 of the actual costs that we put forward.

19 Q. And you did review the testimony of the
20 intervenor witnesses?

21 A. Yes.

22 Q. In your rebuttal testimony at line 614, if

1 I read your testimony correctly, you're suggesting
2 that the elimination of generation from ComEd's
3 assets explains some of the change in the ratio of
4 costs.

5 Am I reading that testimony correctly?

6 **A.** Can you state your question again.

7 **Q.** At line 614 --

8 **A.** Got it.

9 **Q.** Are you suggesting there that the
10 elimination of generation costs, generation assets
11 from the ComEd books explains the change in ratio
12 raised by some of the intervenor witnesses?

13 **A.** I think the point I'm making here is that
14 in the past rate case, general plant costs were
15 spread out across different entities. They're
16 spread out across distribution, customer service,
17 and production facilities. Since ComEd today has
18 no production facilities, the general plant that
19 was used in previous rate cases may not be
20 applicable.

21 **Q.** The costs that were assigned or allocated
22 among distribution, customer service, and the

1 generation functions that you mentioned, in the
2 last case, those costs at that time were properly
3 allocated or assigned among those functions,
4 weren't they?

5 **A.** At that point in time, we had generation
6 facilities.

7 **Q.** Specifically costs properly attributed to
8 production were, in fact, assigned or allocated to
9 production?

10 **A.** Correct.

11 **Q.** And costs properly attributed to
12 distribution were assigned or allocated to
13 distribution?

14 **A.** Yes.

15 **Q.** You believe that to be true?

16 **A.** I do.

17 MR. REDDICK: Nothing further.

18 JUDGE HALOULOS: We're going to break for lunch
19 until 1:15.

20 (Whereupon, a lunch.

21 Break was taken.)

22

1 (Whereupon, the afternoon session
2 began at approximately 1:15 p.m.)
3 JUDGE HALOULOS: We can proceed.
4 CUB.
5 JUDGE DOLAN: Mr. Kelter, are you ready to do
6 your cross of Mr. Costello?
7 (Witness previously sworn.)
8 JOHN COSTELLO,
9 having been called as a witness herein, after
10 having been first duly sworn, was examined and
11 testified as follows:
12 CROSS EXAMINATION
13 BY
14 MR. KELTER:
15 Q. Good afternoon. My name is Rob Kelter from
16 the Citizens Utility Board. I just have a couple
17 questions for you this afternoon.
18 Could you turn to Page 5, Line 97 of
19 your surrebuttal, please.
20 There's statement by Mr. Tom -- well,
21 you say Mr. Tom also charges that your rebuttal
22 testimony ignores the inherent incentive that the

1 company has to inflate its costs and boost earnings
2 for its shareholders. And you're asked if there's
3 any basis for charge and you say, No, it's nothing
4 but baseless speculation. And I want to ask you a
5 couple questions about that.

6 Under basic ratemaking principals, the
7 company earns a return on its investment; does it
8 not.

9 A. Yes.

10 Q. So let's say, just a hypothetically, that
11 you have \$100 million in investment and you want a
12 10 percent rate of return on that, that would be
13 less income for the company than if you had a
14 \$200 million investment that you've earned 10
15 percent rate of return on; wouldn't it?

16 A. Mathematically correct, yes.

17 Q. So the more capital investment in rate
18 base, the more money the company earns?

19 A. I think his statement really ignores the
20 reality of --.

21 Q. I'm not asking -- I'm asking you a direct
22 question. Yes or no?

1 **A.** Then repeat the question, please.

2 **Q.** The more capital expense in rate base, the
3 more money the company earns; correct?

4 **A.** Correct.

5 **Q.** Thank you.

6 Could you turn to Page 7 of your
7 rebuttal, please.

8 At Line 129, there is a question, How
9 much are the other parties trying to reduce ComEd's
10 revenue requirement? And then there's a long
11 answer about what each of the parties' position is.

12 Then there's a question that said, How
13 would the granting of these alternative requests
14 effect customers? And your response is, It will
15 hurt our customers. It will hurt our efforts to
16 keep the lights on.

17 Are you saying that if, in fact, the
18 level of delivery service rate that CUB proposes is
19 granted by the Commission, that the lights are
20 going to go out.

21 **A.** What I was talking about was wholistically
22 there's a lot of different proposals put forth

1 here, and some of these proposals or any of them
2 are accepted certainly do impair our ability to
3 improve the reliability in the ComEd system.

4 **Q.** I'm trying to understand just what the
5 threat is to reliability is from these proposals.
6 Are you saying that if all the proposals are
7 granted, the lights are going to go out, or some of
8 them, or how do you distinguish here?

9 **A.** I think that we have presented what we
10 believe are our true costs over these last four
11 years, and not accepting those true costs would put
12 us in a position that we may have to modify some of
13 our operating practices, which would impair us from
14 improving our reliability in future years.

15 **Q.** So how close are we to the lights going out
16 if these are granted?

17 **A.** It depends on how extreme the cost
18 differential is.

19 **Q.** If CUB's delivery service rate is what we
20 propose is accepted?

21 **A.** I would have to go back and take a look in
22 how that fits with what our operating plans are

1 right now today, and I don't have those specifics
2 with me.

3 MR. KELTER: That's all the questions I've got.

4 CROSS-EXAMINATION

5 BY

6 MR. GOLDENBERG:

7 Q. Good afternoon. I'm Allen Goldenberg, an
8 Assistant State's Attorneys on behalf of the Cook
9 County State's Attorney.

10 Let's start out with a general question.
11 Would you agree that ComEd is trying to provide the
12 Commission with the testimony and appropriate
13 details to support each of its cost and adjustment.

14 A. I would, yes.

15 Q. Would you also agree that putting a number
16 in context, it would be appropriate to know whether
17 you were using a proxy for an amount?

18 A. Pardon me? A proxy what?

19 Q. For a particular amount as opposed to an
20 actual number?

21 A. I think we supplied actual costs in every
22 regard.

1 **Q.** Are you aware of anywhere in ComEd's direct
2 testimony where there's a discussion of using the
3 2004 CWIP, C-W-I-P, balance as a proxy?

4 **A.** It would not be in my testimony. I would
5 have to check and see where in other testimonies
6 may be construction work in progress it's actually
7 used.

8 **Q.** You're not aware of anywhere?

9 **A.** I am not.

10 **Q.** Did you see ComEd work overtime to
11 implement best practices?

12 **A.** Absolutely.

13 **Q.** And would you agree that it is not
14 unreasonable to assume that some level of improved
15 efficiency in productivity is planned for and
16 expected?

17 **A.** We strive for improving efficiency and
18 productivity every year, yes.

19 **Q.** Do you know what the actual distribution O
20 and M expenses were for 2005?

21 **A.** I don't have them with me. We could get
22 them from one of the other witnesses from the

1 financial side. I'm sure they could give that to
2 you exactly.

3 Q. Are the actual distribution O and M
4 expenses for 2005 going down?

5 A. Again, I don't have them in front of me.
6 Going down compared to what year?

7 Q. Just generally trending down from previous
8 years.

9 A. Yes, I believe they were.

10 Q. In your surrebuttal testimony at Pages 20
11 and 21, and I'm looking -- or directing your
12 attention to around Lines 396 to 408, you talk
13 about Mr. McGarry and what you claim to be a
14 failure to understand yours and Mr. DeCampli's
15 rebuttal testimony. And in the context of that
16 discussion, you indicate that there is a graft
17 showing a trend in distribution capital condition
18 that was reported to the FERC in '94 to 2004?

19 A. Yes.

20 Q. And you indicate there that what you had
21 intended was not to predict the future trend; is
22 that correct?

1 **A.** That is correct, yes.

2 **Q.** Yet, you go on to point out that

3 Mr. DeCampi rejects Mr. McGarry's use of the data

4 to show a trend; is that correct?

5 **A.** And what line are you referring to.

6 **Q.** The discussion is around Lines 396 to 408

7 in your surrebuttal. It's Page 20 and 21.

8 **A.** My comment says that, while I submitted the

9 capital improvements in terms of dollars over a

10 number of years, I did not use it as a trend line.

11 Really an indication of what expenditures were.

12 And in the case of Mr. McGarry's testimony, he

13 seemed to be trying to establish a particular

14 trend. That was not what I was doing.

15 **Q.** Now you note there that Mr. DeCampi

16 rejects Mr. McGarry's use of the data?

17 **A.** Yes.

18 **Q.** Now, did you do any analysis yourself or

19 are you just letting us know what Mr. DeCampi

20 told?

21 **A.** My statement is only that Dave has looked

22 at it and will address it in his testimony.

1 **Q.** Do you know whether your data is based on
2 FERC Form 1 actual data?

3 **A.** It is.

4 **Q.** Do you know whether Mr. McGarry's data is
5 based on FERC Form 1 --?

6 **A.** I do not.

7 **Q.** -- actual data?

8 Now, turning to your rebuttal testimony
9 on Page 11, you refer -- starting around
10 Line 221 -- to, By failing to recognize the rise in
11 ComEd's actual costs, these parties suggested
12 revenue requirements are fatally flawed.

13 And, yet, the question before in the
14 chart on Lines 216 to 19 with that question shows
15 investment in plan; doesn't it.

16 **A.** It does.

17 **Q.** And that doesn't show cost; correct?

18 **A.** It shows the cost of the capital additions
19 each of the years on that graph.

20 **Q.** Now, did you show anywhere in the context
21 of that discussion operating expenses for the last
22 few years?

1 **A.** No.

2 **Q.** Why not show operating expense for the last
3 three years in the context of making that point?

4 **A.** Certainly a big driver has been the capital
5 improvements we've made in our system, trying to
6 improve reliability across all of Commonwealth
7 Edison.

8 **Q.** Now, you would agree that operating
9 expenses have been doing down for the last few
10 year; wouldn't you?

11 **A.** I remember that they went down in 2005. I
12 would have to go back and check to see if they went
13 back down the previous years.

14 **Q.** Now, wouldn't that be more of a true
15 measure of distribution, O and M costs?

16 **A.** You can't ignore the capital component
17 though as well in terms of what we put in the
18 system.

19 **Q.** Which would be a better measure?

20 **A.** I've looked at them both on a monthly basis
21 in terms of what our capital expenditures are and O
22 and M expenditures.

1 **Q.** The chart only looked at part of that; is
2 that correct?

3 **A.** Yes.

4 **Q.** Do you know whether Mr. McGarry took into
5 account inflation in his productivity adjustment?

6 **A.** I do not.

7 **Q.** On Page 21 of your surrebuttal starting
8 around Line 413, you indicate that, fundamentally,
9 ComEd's investment in plan would not necessarily
10 lead to overall lower maintenance costs. In fact,
11 with increased investment, there are more assets
12 requiring maintenance, which in turn, can lead to
13 an overall increase in maintenance expense.

14 Are you familiar with that.

15 **A.** I am.

16 **Q.** Do you have any studies or detailed
17 analysis to support that contention?

18 **A.** My operating experience being a chief
19 operating officer of Commonwealth Edison would be
20 that when you add 40,000 transformers over a
21 four-year period of time at 10,000 miles of
22 underground and overhead cable, you have to go out

1 and do periodic inspections on that equipment even
2 if it is relatively new.

3 So I don't agree with the premise of
4 those arguments that just because you're putting in
5 some new equipment, that your costs automatically
6 go down because you still have equipment that
7 you've had in service for a long period of time.

8 **Q.** So if we asked you for something on paper
9 or study that quantified that assertions, is that
10 something you have and you've done?

11 **A.** Ask me the question again in terms of what
12 you're asking for.

13 **Q.** Well, I asked you, did you have any study
14 to support your contention on -- starting at
15 Line 413.

16 **A.** Well, we could quantify is the cost of
17 maintenance and cost of O and Ms have remained the
18 same. In some cases, we've been doing more
19 corrective maintenance over the last few years as
20 well preventative maintenance.

21 **Q.** But certain things you do result in cost --
22 certain improvements lower costs and lower

1 maintenance costs; don't they?

2 **A.** Not in terms of maintenance as much, as

3 sometimes your technology improvements will add to

4 productivity. Maintenance is fairly stable. And

5 the more equipment you put on the system, usually

6 your maintenance costs will increase.

7 **Q.** Well, sometimes things get old. Might they

8 break more and need more repair?

9 **A.** Absolutely.

10 **Q.** Wouldn't that increase costs?

11 **A.** Yes.

12 **Q.** And would your answer be the same with

13 respect to items like system upgrades as opposed to

14 new business?

15 **A.** Ask me the question again. I'm not sure I

16 understand your point.

17 **Q.** Again, I'm focusing on your statement at

18 Line 413 on Page 21.

19 **A.** Line 413?

20 **Q.** Correct.

21 **A.** It's not on Page 21 then.

22 **Q.** Of your surrebuttal?

1 **A.** Then you just jumped from rebuttal to the
2 surrebuttal.

3 **Q.** Sorry.

4 **A.** Could you ask me your question again.

5 **Q.** Okay. You found the statement at Line 413?

6 **A.** I have, yes.

7 MR. GOLDENBERG: One second.

8 BY MR. GOLDENBERG:

9 **Q.** If we were talking about system upgrades,
10 would your statement at Line 413 still be the same?

11 **A.** Yes, because the numbers I quoted to you
12 were system upgrades that we put in over the last
13 four years. We installed 17 new distribution
14 substations. We installed 40,000 transformers.
15 All of those new pieces of equipment will be put
16 into a monthly maintenance program in terms of
17 substations or a yearly maintenance program. Once
18 you put equipment in service, you do have to
19 establish a maintenance program for it.

20 **Q.** Are you familiar with statements that ComEd
21 and Exelon makes about ComEd in the investment
22 community in terms of operating costs in 2005?

1 **A.** No. I was not there.

2 MR. GOLDENBERG: That's all I have.

3

4 CROSS-EXAMINATION

5 BY

6 MR. BRADY:

7 **Q.** Good afternoon, Mr. Costello.

8 **A.** Hello, Sean.

9 **Q.** My name is Sean Brady, and I and my
10 co-counsel, Ms. Scarsella, have some questions for
11 you. I'll be asking you questions about general
12 and tangible plan and administrative and general
13 expenses. And Ms. Scarsella has some questions
14 regarding incentive compensation.

15 Now, as I already mentioned, you
16 addressed general and tangible plan in your
17 testimony; correct.

18 **A.** Correct.

19 **Q.** And you also addressed the administrative
20 and general expenses; correct?

21 **A.** That is correct.

22 **Q.** Now, with regards to the general and

1 tangible plan, is it your understanding that ComEd
2 is proposing to use direct assignment?

3 **A.** I'm not familiar with the term "direct
4 assignment" if can you clarify what you mean by
5 that.

6 **Q.** Sure.

7 Are you familiar with how ComEd is going
8 to functionalize costs for distribution.

9 **A.** Yes.

10 **Q.** And how are they doing that?

11 **A.** Uniform Standard -- FERC's Uniform Standard
12 of Accounts in terms of transmission, distribution,
13 that kind of functionalization.

14 **Q.** How do you determine how costs are to be
15 divided between transmission and distribution?

16 **A.** We use the FERC's Uniform Standard of
17 Accounts, and you take look at the piece of
18 equipment and determine if it's used on the
19 transmission or it's used on the distribution side.

20 In places like a substation where you
21 have the land or the building, you allocate those
22 by what the preponderance of that particular site

1 is, either transmission or distribution.

2 Q. Mr. Costello, do you have your surrebuttal
3 testimony in front of you?

4 A. I do, Sean.

5 Q. Can you turn to Page 12, Line 258.

6 Let me know when you're there.

7 A. I am here, Sean.

8 Q. Starting on Line 258, it says, Thus, the
9 amount of general plan and tangible plan that the
10 Commission allocated to production during ComEd's
11 last delivery service rate case is simply
12 irrelevant here. This rate case is based on an
13 adjusted 2004 test year during which ComEd no
14 longer owned or operated production facilities?

15 A. Yes.

16 Q. Now, in the very last sentence, you refer
17 to no longer owning or operating production
18 facilities. Do you see that?

19 A. Yes, I do.

20 Q. And that's because ComEd divested itself of
21 those facilities in 2001?

22 A. That's correct.

1 **Q.** As a matter of fact, you mentioned
2 divestiture, I believe, in Line 254. Do you see
3 that?

4 **A.** Yes.

5 **Q.** Is it your understanding that ComEd was
6 required by the Commission or any other regulatory
7 body to divest its Generation plant?

8 **A.** As Frank Clark said this morning, a
9 strategic decision was made by the company back in
10 between 1997 and the years 2001 to divest ourselves
11 of both our Generation plants and our nuclear
12 plants. Split them apart from ComEd.

13 **Q.** So, therefore, it was a business decision
14 by the company?

15 **A.** Correct.

16 **Q.** Now as a business decision, would you agree
17 that it was made in the interest of both
18 shareholders and customers?

19 **A.** Yes.

20 **Q.** Do you think it would be fair for the
21 company to raise delivery rates solely because it
22 decided to divest its Generation?

1 **A.** I think the divestiture of Generation
2 certainly helped customers over time pushing us to
3 a more competitive marketplace, which over time
4 should lower the commodity price of electricity and
5 certainly stabilize it. Certainly, too, are the
6 divestiture of frozen delivery rate for a longer
7 period of time, which I think was a great for our
8 customers at that time point in time.

9 **Q.** But yes or no, isn't it fair for the
10 company to raise delivery rates solely because it
11 decided to divest its Generation?

12 **A.** I don't think delivery rates are being
13 raised solely because of divestiture in Generation
14 as much as we look for a request to increase our
15 delivery rates because of the other costs to do
16 business have gone up over the last -- since our
17 last rate case.

18 **Q.** Now, you just mentioned that the cost of
19 operations had gone up?

20 **A.** Cost of capital and cost of operations
21 during the past four years, yes.

22 **Q.** But is it your understanding that the

1 company's distribution expenses have increased?

2 **A.** I think our total distribution O and M cost
3 have been increasing and then came down, but
4 certainly the cost of capital investment we have
5 made in our system over the last four years have
6 gone up dramatically.

7 **Q.** Well, just focusing on your distribution,
8 operation and maintenance, those expenses, have
9 they increased since your last delivery service
10 case?

11 **MR. RIPPIE:** Just to be clear, are you referring
12 specifically to the distribution O and M accounts
13 or to all operating and maintenance expenses
14 associated with distribution function?

15 **MR. BRADY:** Just the distribution.

16 **THE WITNESS:** Just the distribution charges have
17 gone down within the last year.

18 **BY MR. BRADY:**

19 **Q.** And then are you also familiar with the
20 customer service expense function?

21 **A.** I am.

22 **Q.** And haven't those expenses also gone down

1 since the last delivery service case, delivery
2 service rate case?

3 A. I would have to go back and check. I do
4 know that they came down again in 2005.

5 Q. If I were to give you the operating
6 statement that was proved in the 01- -- in the last
7 delivery service rate case, would that be a --
8 would that allow you to answer that question?

9 A. Only if I saw what the intervening years
10 were between 2005 and 2001.

11 Q. Well, if I'm just asking you to do a
12 comparison between 2000- -- from your test year and
13 2001?

14 A. If I could see the 2004 test year number
15 for customer services, yes.

16 MR. BRADY: Glen, isn't that something that's
17 already in your documents?

18 MR. RIPPKE: Yeah, I'm sure it is. I don't know
19 that he has it in front of him.

20 THE WITNESS: It's not in my testimony.

21 MR. BRADY: Okay.

22 MR. RIPPKE: I would think it is more of the

1 scope Mr. Hill's testimony.

2 BY MR. BRADY:

3 Q. Another component of -- well, going back to
4 the customer service component that we were just
5 talking about and the distribution for operation of
6 maintenance. They're all part of the operating
7 expenses; correct?

8 A. They are just part of, yes.

9 Q. And another aspect of that is the customer
10 account expenses; correct?

11 A. Correct.

12 Q. To your knowledge, have those increased
13 since the last delivery service case?

14 A. Again, I think it's in Jerry Hill's
15 testimony. It is not in mine.

16 Q. Thank you.

17 Do you have your rebuttal testimony
18 there in front of you.

19 A. I do.

20 Q. Can you turn to Page 31, Lines 7 and 11.
21 Let me know when you're there.

22 A. I'm here.

1 **Q.** Now there, do you see the statement, As
2 with general and tangible plan, the Commission must
3 evaluate the cost included in the revenue
4 requirement and ascertain on the facts of this
5 particular case whether such costs are appropriate
6 for recovery. Such an evaluation must focus
7 exclusively on the cost presented in this docket?

8 **A.** That's correct.

9 **Q.** Now in that last sentence, you're referring
10 to an evaluation of the general and tangible plan;
11 correct?

12 **A.** Correct.

13 **Q.** Now, is it your position that evaluations
14 of general and tangible plan should not look at the
15 costs presented by the company in its last delivery
16 service case?

17 **A.** No. What I'm suggesting is that you should
18 be looking at the cost we've incurred in the test
19 year and the cost we've incurred since that point
20 in time.

21 I can give you numerous examples of
22 investments we've made both in general plan and

1 tangible plan if you'd like me to give them to you.

2 Q. That's okay.

3 Do you have your -- can you turn your

4 direct testimony on Page 31, Lines 670 to 673.

5 There is a question about your conclusions

6 regarding administrative and general expenses. Do

7 you see that.

8 A. I do.

9 Q. And in response, you state your agreement

10 with the preceding question, in that A and G

11 expenses proposed by ComEd are necessary and

12 prudent?

13 A. I do.

14 Q. Therefore, it is fair to say that you think

15 the A and G expense level being proposed by ComEd

16 is reasonable?

17 A. I do.

18 Q. Is it your understanding that ComEd is

19 proposing to functionalize the administrative and

20 general expenses with a general labor allocator?

21 A. I'm not familiar with that term. Jerry

22 Hill will be probably better equipped to answer

1 that for you.

2 **Q.** So are you saying that you don't know how
3 the costs were functionalized?

4 **A.** I was not familiar with the term "waiver"
5 that you used, so I would suggest you direct that
6 question to Jerry Hill.

7 I do not know the cost that come to us
8 for administrative general. We monitor that every
9 month.

10 **Q.** Can you repeat that last part.

11 **A.** I do understand the cost for administrative
12 general that come to me every month, so I do
13 understand it's component part. I didn't
14 understand your comment about "waiver" .

15 **Q.** Well, no. It wasn't a waiver. It was a
16 general labor allocator.

17 **A.** General labor? Labor or waiver?

18 **Q.** Labor.

19 **A.** Okay.

20 **Q.** You want me to repeat the question
21 altogether and speak up a little bit?

22 **A.** Yes.

1 **Q.** I apologize.

2 Would you agree -- okay. Is it your
3 understanding that ComEd is proposing to
4 functionalize administrative and general expenses
5 with a general labor allocator.

6 **A.** Again, my administrative and general costs
7 are tied to pension costs, benefit costs, and
8 medical costs, which is tied to the labor that's
9 used in the distribution company. If that's your
10 question, the answer is yes.

11 **Q.** No, not exactly, but we're getting close.

12 Is it your understanding that those --
13 the wages, the salaries, the pensions, how are
14 those A and G expenses allocated through functions
15 such as distribution and transmission.

16 **A.** First of all, salaries are O and M charges,
17 so they would not be included in the administrative
18 and general costs. Administrative and general
19 usually gets to your pension and benefit costs as
20 well as your healthcare and then a number of other
21 accounting fees and Business Service Company costs.
22 So, salaries are not -- salaries are really caught

1 in the distribution O and M.

2 Q. Thank you for the clarification; but just
3 going back to my question, do you know how that
4 allocation is made?

5 A. The allocation on the pension benefits and
6 healthcare is really driven by those employees
7 working in the distribution company.

8 Q. So is the allocation of pension based on a
9 general labor allocator?

10 A. Again, Jerry Hill will be much more the
11 expert in terms of pension than I am.

12 Q. So are you saying that you do not know how
13 the costs were functionalized for A and G expenses?

14 A. I know that the cost come in distribution
15 company predicated upon our number of employees.
16 How the cost themselves are derived would be better
17 answered by someone that's a subject matter expert
18 in terms of financial aspect.

19 Q. Thank you.

20 Mr. Costello, is it your understanding
21 that salary is not part of A and G expense.

22 A. I would say that the salary of most of the

1 distribution employees come into the O and M.
2 There would be salary allocated in the A and G that
3 comes from the Business Services Company.

4 Q. Speaking of the Business Service Company,
5 BSC provides services to ComEd as well as other
6 Exelon subsidiaries; correct?

7 A. That's correct.

8 Q. Can you explain how Business Services
9 Corporation, or BSC, costs were allocated and
10 directly assigned between ComEd and other Exelon
11 subsidiaries?

12 A. We have service level agreements that we
13 establish with the business service companies that
14 sets the rate we pay and the volumes that we're
15 going to be purchasing and other transactions that
16 we're going to be adding from the BSC every year,
17 and that's how costs are allocated.

18 Q. But isn't that only the costs to -- don't
19 the service level agreements only contain in the
20 costs for ComEd?

21 A. Yes.

22 Q. Then how are they allocated between ComEd

1 and Exelon?

2 **A.** Business Services Company would set up an
3 SLA with the different companies within the Exelon
4 family.

5 **Q.** So if BSC is actually performing a service
6 that is common between both ComEd and another
7 Exelon subsidiary, how is -- or how does BSC
8 allocate the cost between the two?

9 **A.** So one of the advantages of having a
10 Business Services Company is you get into joint
11 procurement, so we have a sister utility company in
12 the east. When you're buying transformers, you get
13 the synergies in buying the trans- -- same types of
14 transformers for the two utility companies. The
15 cost of those transformers then go to each of the
16 respective utilities predicated upon what your
17 volume of purchase of transformers are.

18 **Q.** But that's more of an example; correct?

19 **A.** I thought an example would answer your
20 question for you.

21 MR. BRADY: I have to further questions, but
22 Ms. Scarsella does.

1 THE WITNESS: Thank you.

2 CROSS-EXAMINATION

3 BY

4 MS. SCARSELLA:

5 Q. Good afternoon, Mr. Costello.

6 A. Hi.

7 Q. My name is Carla Scarsella. I also

8 represent staff witnesses of the Illinois Commerce

9 Commission. I will be conducting part two of the

10 cross-examination and focusing on incentive

11 compensation.

12 In your rebuttal testimony as well as

13 your surrebuttal testimony, you responded to staff

14 testimony regarding incentive compensation;

15 correct.

16 A. Yes, I did.

17 Q. Therefore, you are familiar with ComEd's

18 incentive compensate plans; correct?

19 A. I am.

20 Q. I'd like you to refer you to your rebuttal

21 testimony, ComEd Exhibit 13, Page 17, Lines 399

22 through 401.

1 There you state in part, and I quote,
2 Because ComEd uses a total compensation package to
3 attract necessary employees, the incentive
4 compensation costs commensurately reduce the other
5 compensation costs. End of quote.

6 Can you specify for me which other
7 compensation costs are reduced.

8 **A.** We looked at the incentive costs as part of
9 your total compensation. So without incentive, I
10 think that we would have to roll that amount of
11 monies into a base salary.

12 **Q.** All right. So your Scarsella if I
13 understand your answer correctly, your base salary
14 would increase?

15 **A.** Yes.

16 **Q.** Are there any other costs that would
17 increase?

18 **A.** No. I think we would probably take the
19 incentive component and roll it into a base salary
20 because people do look at the total package.

21 **Q.** Okay. So other than base salary, probably
22 nothing would increase.

1 Isn't it correct that generally under
2 the ComEd incentive compensation plans -- I'm just
3 trying to understand how they work. A target award
4 is established which represents the award that will
5 be paid for achieving a target performance by an
6 eligible employee.

7 **A.** That's correct.

8 **Q.** Isn't it also correct that awards increase
9 with incremental performance above the threshold
10 level set?

11 **A.** There's three level set. There's a
12 threshold level set, a target level set, and
13 distinguished level set. People are paid incentive
14 depending upon which of the different lines of
15 demarkation they hit, either threshold, target or
16 the distinguished level.

17 **Q.** Okay. If the target levels are exceeded in
18 any given year and incentive compensation is paid
19 at a higher than target level, would the company
20 reduce other compensation costs such as base
21 payroll?

22 **A.** No.

1 **Q.** Then under that scenario where incentive
2 compensation payout is higher than the target
3 level, the total compensation costs incurred by the
4 company could, in fact, increase?

5 **A.** That's correct.

6 **Q.** Now, I'd like to refer you to two pages in
7 your rebuttal testimony. If you can turn, first,
8 to Page 17, Lines 405 through 406.

9 And there you state, and I quote,
10 Reduced expenses and greater efficiency within
11 ComEd leads to not only increased earnings per
12 share but also lower rates.

13 And then I also refer you to the very
14 next page, Page 18, Lines 428 through 429 where you
15 state, and I quote, Also, assuming that rates
16 follow costs, customers will benefit from lower
17 rates in the next case.

18 Now has ComEd ever filed for a rate
19 decrease as a result of lower operating expenses.

20 **A.** I don't the answer to that question.

21 **Q.** Is it that you don't know or you're not
22 aware of any rate filing?

1 **A.** I'm not aware of it, but, you know, I've
2 only worked at Commonwealth Edison for 36 years,
3 not 400-plus years.

4 **Q.** All right. Fair enough.

5 Do you know of any Illinois utilities
6 that have filed for a rate decrease as a result of
7 lower operating costs.

8 **A.** I don't have that knowledge.

9 **Q.** Can I refer you to your surrebuttal
10 testimony now, ComEd Exhibit 30, Page 12, Lines 237
11 to 238.

12 **A.** You said my surrebuttal. Which page,
13 please?

14 **Q.** Page 12.

15 **A.** Page 12. I'm sorry.

16 **Q.** That's all right. Lines 237 to 238.

17 Are you there.

18 **A.** I am, yes.

19 **Q.** There you state, Staff's position generates
20 the reverse incentive for ComEd to drop incentive
21 compensation and pay the difference in additional
22 base salary.

1 Now, can you refer me to staff testimony
2 where staff recommends that ComEd discontinue its
3 incentive compensation plan.

4 **A.** I think the position that I was trying to
5 articulate was that if incentive compensation is
6 not allowed, then the alternative the company would
7 have would be to put that money in the base salary
8 since the Commission's position in the past has
9 been that base salaries do get accepted in the
10 ratemaking proceeding, that that would be a logical
11 alternative.

12 **Q.** So if I can characterize your response,
13 your position and testimony is your interpretation
14 of staff's testimony?

15 **A.** Yes.

16 **Q.** And staff actually did not make that
17 recommendation?

18 **A.** Correct.

19 **Q.** Are you familiar with ComEd's last rate
20 case Docket 01-0423?

21 **A.** Is that the delivery services?

22 **Q.** Yes.

1 **A.** Only to very high level.

2 MS. SCARSELLA: Then I have no further
3 questions.

4 JUDGE REPLACE: Does anybody else have any
5 questions for Mr. Costello?

6

7

8

9 REDIRECT EXAMINATION

10 BY

11 MR. RIPPIE:

12 **Q.** Mr. Costello, Mr. Reddick asked you about
13 your understanding of the Commission's prior
14 allocation of general and I believe also intangible
15 plan at a time when ComEd honed production
16 facilities. Do you recall that brief line of
17 questions?

18 **A.** I do.

19 **Q.** Once ComEd disposed of its nuclear
20 generating facilities in very early 2001, did ComEd
21 after that point retain any production facilities?

22 **A.** No.

1 **Q.** Was it your intention by your responses to
2 Mr. Reddick to testify that you agreed with the
3 determination by the Commission of the allocation
4 of general plan in the 2001 case or that you agreed
5 with his description of that allocation?

6 **A.** I agreed with his description.

7 **Q.** Staff in its cross-examination concerning
8 general and tangible plan asked you a question and
9 a part of your answer involved a discussion of
10 examples of general and tangible plan added since
11 the Commission's most recent rate order that
12 supported delivery services. Do you recall that
13 question and answer?

14 **A.** I do.

15 **Q.** Could you give us some of the examples that
16 you were offering to provide during
17 cross-examination?

18 **A.** For example, in a tangible plan, we made a
19 very large investment over the last four years in
20 SCADA equipment. SCADA equipment is basically
21 Supervisory Control and Automatic Distribution.
22 Equipment we installed in our substations gives us

1 very live time telemetry as well as remote
2 activation abilities. That's been a large
3 component of our investment in the last 40 years in
4 tangible plan. In terms of general plan.

5 In tangible plan, numerous software
6 applications have been installed in the company
7 over the last four years. I personally installed
8 mobile data when I was head of customer service.
9 Mobile data basically allows you to do all of your
10 meter sets and all of your field work and customer
11 service side in a real-time basis. So that if a
12 customer calls in and said, Why, was John Costello
13 in my backyard 15 minutes ago? That person
14 answering the phone would have all the information
15 in a real-time basis.

16 Beyond systems like that, we've
17 installed completely new outage management system
18 which helps us redeploy our crews and update the
19 estimated restoration times. We put in a passport
20 work management system. We put in a variety of
21 technological tools, including GPS, not only at a
22 lot of our equipment in trying to improve customer

1 service and our response times. So a wide variety
2 of things for both general plan and tangible plan.

3 Q. Do any of those assets support production
4 of electricity?

5 A. No.

6 Q. Mr. Reddick finally also asked you about
7 the difference between actual costs and reasonable
8 and prudent cost. How do you know that the actual
9 cost about which you testify were, in fact,
10 reasonably -- reasonable and prudently incurred?

11 A. Because of the challenge process we use
12 within the company. Before we go ahead and make
13 any kind of investment or authorized expenditure,
14 it goes through a myriad set of challenge processes
15 at all levels of the organization.

16 Number one, ensure an investment is
17 something that will be used and useful and is
18 required on the system. We set up a very defined
19 scope schedule and budget for every project that we
20 undertake. We go through it and a full assessment
21 of those projects are completed, and we measure
22 every project that we do at three different phases

1 of every project.

2 We start out with the conceptual stage.
3 We set up a business plan for that, what it scopes
4 and schedule and budget will be for the conceptual
5 stage. We then go into the engineering stage. We
6 do the same set of challenges at all levels of the
7 organization in that phase. We do a third set of
8 challenges when we get to the actual construction
9 stage. And then finally when we finish a project,
10 we go back and do a lessons learned on every
11 project.

12 Those strive me to the conclusion that
13 the costs were prudent and reasonable.

14 MR. RIPPIE: Thank you. That's all I have.

15 MR. BRADY: I have two questions.

16 RE CROSS-EXAMINATION

17 BY

18 MR. BRADY:

19 **Q.** Mr. Costello, you listed a number of
20 projects that related to general plan and tangible
21 plan; correct?

22 **A.** Yes.

1 **Q.** Were those projects since -- put in place
2 since 2000?

3 **A.** Since 2001.

4 **Q.** Since 2001?

5 And isn't it correct that staff witness
6 Lazare is not challenging the company's proposed
7 functionalization of general and tangible plan
8 since 2000.

9 **A.** Is he questioning it? I think he's
10 questioning the reasonable -- not the
11 reasonableness of it as much as he's questioning
12 the scale of it, was my interpretation.

13 **Q.** I'm sorry, the scale or stale?

14 **A.** Scale. Scale.

15 **Q.** So that's your understanding of
16 Mr. Lazare's testimony?

17 **A.** Yes.

18 MR. BRADY: I have no further questions.

19 EXAMINATION

20 BY

21 JUDGE DOLAN:

22 **Q.** Mr. Costello, I have one question and you

1 can let me know if this isn't an area of your
2 expertise.

3 But in the pretrial memorandums, I was
4 reading through the general plan functionalization
5 and amount, and it's talking about assets. But
6 then it mentions the general labor allocator that
7 was -- that Sean asked you about. How is that an
8 asset.

9 **A.** Jerry Hill is the subject matter expert on
10 general plan and tangible plan. Jerry Hill will be
11 the person that you want to direct your question
12 to.

13 JUDGE DOLAN: Okay. Thank you. I just didn't
14 want to miss the opportunity if you were the one,
15 sir.

16 THE WITNESS: Okay. I appreciate that.

17 JUDGE DOLAN: No other questions?

18 Then, Mr. Costello, you may be excused.

19 MR. NICKERSON: Good afternoon, your Honors,
20 Commission. My name is Melvin Nickerson. I'm an
21 attorney with the Citizen Utility Board. At this
22 time, I'm going to present the direct testimony of

1 expert witness Mr. Michael McGarry.

2 Good afternoon, Mr. McGarry.

3 THE WITNESS: Good afternoon.

4 MR. NICKERSON: I apologize if I did not follow
5 proper protocol. Does he actually needs to be
6 sworn in ahead of time?

7 JUDGE DOLAN: Yeah. Just go ahead.

8 JUDGE HALOULOS: Can you raise your right hand.

9 (Witness sworn.)

10 MICHAEL J. McGARRY, SR.,
11 having been called as a witness herein, after
12 having been first duly sworn, was examined and
13 testified as follows:

14 DIRECT EXAMINATION

15 BY

16 MR. NICKERSON:

17 Q. Good afternoon, Mr. McGarry.

18 A. Good afternoon.

19 Q. How are you doing today, sir?

20 A. I am fine.

21 Q. Good.

22 Would you say please state your full

1 name and business address for the record.

2 **A.** Sure. Michael J. McGarry, M-c, capital,
3 G-a-r-r-y, Senior. My business address is 2131
4 Woodruff Road, Suite 2100, Greenville, South
5 Carolina 29607.

6 **Q.** What is your professional background in
7 which you will be testifying today?

8 **A.** I'm testifying as a revenue requirements
9 expert on behalf of CUB, Citizens Utility Board,
10 the State's Attorney's Office and the City of
11 Chicago.

12 **Q.** Did you prepare written testimony for this
13 proceeding?

14 **A.** I did.

15 **Q.** Do you have before you what has been
16 identified and marked as CUB Exhibit 2 for
17 identification?

18 **A.** I do.

19 **Q.** This document is entitled Direct Testimony
20 of Michael J. McGarry on behalf of the Citizens
21 Utility Board, the Cook County State's Attorney
22 Office and the City of Chicago; is that correct?

1 **A.** It is.

2 **Q.** This document consists of a title page, a
3 table of contents, and is numbered beginning at
4 Page 1 through Page 27; is that correct?

5 **A.** It is.

6 **Q.** In addition, there are nine exhibits --
7 excuse me, ten exhibits that's attached to this
8 direct testimony?

9 **A.** I believe that's correct.

10 **Q.** Does this document consist of questions and
11 answers in respect to the docket in this matter?

12 **A.** Yes, they do.

13 **Q.** Did you prepare this document for this
14 proceeding?

15 **A.** I did.

16 **Q.** As of the filing of the surrebuttal
17 testimony by ComEd witnesses through written
18 testimony, have there been any changes to your
19 direct testimony?

20 **A.** Yes, there were.

21 **MR. NICKERSON:** All right. Allow me at this
22 time, please, to present copies of the direct

1 testimony to the Court -- or, excuse me, your
2 Honors.

3 BY MR. NICKERSON:

4 Q. Mr. McGarry, would you please at this time
5 identify by page, line number, and/or when
6 applicable the appropriate exhibit whereby based
7 upon the testimony stated by ComEd witnesses in
8 written surrebuttal where changes -- you've made
9 some changes.

10 A. Certainly. I first like to add that there
11 was an errata, a first a errata, which was e-filed.
12 I'm not sure of the exact date. All of those
13 changes were posted and made aware to the parties,
14 I want to say, at the end of January. I don't know
15 the exact date.

16 I believe the correct -- the date that
17 that first errata was submitted with several
18 typographical errors and some changes was on
19 January 26 based on the document I'm being showed
20 right now.

21 The document that was handed out to the
22 parties just now is as a result of CUB's attorneys

1 identified as a result of the sur- -- my review of
2 the surrebuttal testimony and in preparation of
3 this hearing.

4 On this direct, beginning into the
5 direct errata, there are no substantive changes,
6 just more reference changes than anything.

7 At Line 242, there's a reference, a
8 parenthetical, that says, CWIP, with the
9 parenthetical, account 108. That should be account
10 107.

11 The next change is on Page 22 at
12 Line 475. There's a number from a company's
13 schedule C-16. It's a typographical error of
14 13139. That number should be 1312900. 13129.
15 1300 129,000.

16 At Page 23, there's an error in the
17 calculation at Line 509. It says that -- the
18 statement says in an allocator of 30.1 percent. It
19 should be 33.1 percent.

20 As a result of that change, the
21 answer -- the numbers in the answer -- following
22 the answer beginning at Lines 513, the number on

1 Line 4 -- 514 should change from 10,907,400 to
2 12,034,500. A parenthetical calculation should
3 reflect the new 33.1 instead of 30 percent at Line
4 516.

5 And then the last change is at 517.
6 It's -- the last number. It says 604,709. It
7 should be 664,979.

8 And that's all of the result of the
9 calculation resulting from that 33.1.

10 Q. Mr. McGarry, other than the calculation and
11 typographic changes that you've made here before
12 the Commission and on the record, do you have
13 any -- this doesn't change your substantive
14 testimony; is that correct?

15 A. It does not.

16 Q. If you were asked the same questions set
17 forth in your direct testimony today, would your
18 answers be the same?

19 A. As corrected, yes.

20 Q. At this time, Mr. McGarry, I'd like to
21 direct your attention to your rebuttal testimony,
22 which has been previously identified as CUB, Cook

1 County State's Attorney Office exhibit -- and City
2 of Chicago Exhibit No. 5.

3 This document is identified as
4 Michael J. McGarry Rebuttal Testimony; is that
5 correct.

6 A. More correctly, Rebuttal Testimony of
7 Michael J. McGarry, Senior.

8 Q. I stand so corrected.

9 This document consists of the title
10 page, a table of context page -- contents page,
11 excuse me. Page 1 through Page 40; is that
12 correct.

13 A. It is.

14 Q. In addition, that document also has
15 attachments, which are identified as Exhibits 5.01,
16 which consist of MJM 0 through MJM 15; is that
17 correct?

18 A. That is correct.

19 Q. Did you prepare this exhibit, the rebuttal
20 testimony in this proceeding?

21 A. I did.

22 Q. Given the surrebuttal testimony that was

1 filed by ComEd witnesses towards the latter end of
2 the month of January 2006, have you made any
3 changes to calculations contained in your rebuttal
4 testimony which has been identified as CUB
5 Exhibit 5.0?

6 **A.** I have.

7 **Q.** At this time would you be so kind as to
8 inform us, by page number, line number and where
9 appropriately, the exhibit number, as to what
10 changes you made.

11 **A.** I can.

12 MR. NICKERSON: Excuse me. I apologize. Just
13 one moment. Let me present the documents to the
14 Court.

15 Your Honors, could we take a couple of
16 minutes to seam things up, if that would be okay?
17 Thank you.

18 (Whereupon, a brief
19 recess was taken.)

20 MR. NICKERSON: I believe we left off,
21 Mr. McGarry, with taking a look at some changes
22 pursuant to ComEd surrebuttal testimony that was

1 filed in late January. And at this point in time,
2 you were going to advise the Commission, opposing
3 counsel, exactly what changes, calculations,
4 typographical errors need to be corrected in your
5 rebuttal testimony.

6 **A.** Yes. My apologizes for misplacing of the
7 document in my notebook here.

8 A correction that I stated on direct at
9 Line 242 was to the rebuttal. There was no
10 correction on direct at Line 242, Page 13. That
11 correction is more appropriate -- is applicable to
12 Page 13, Line 242, the parenthetical about CWIP.
13 It should be account 107, not 108.

14 Just for your Honors' clarification at
15 Page 37, beginning at Line 726, this is not an
16 error but just an inadvertent page break. There
17 was no intended use of white space there. There
18 wasn't supposed to be a chart or anything. It was
19 just a page break flipped in when they printed it.

20 And then at Page 39 as a result of my
21 review of the surrebuttal testimony, I'm making a
22 change at Lines 756. The phrase general expenses

1 by 8.467 million should now be 5.791 million.

2 As a result of that change, the number
3 which did have a typographical error at 7 -- at
4 Lines 769 reads as if the company were reducing the
5 company's requirement by 259 -- \$259 billion.
6 Actually, it should read, 256.524 million. And
7 that should be 256.524.

8 (Change of reporters.)

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1 **Q.** Mr. McGarry, with respect to your direct
2 testimony, is there any confidential information
3 which you have testified to or in regards to?

4 **A.** Yes, I believe there is a confidential
5 exhibit, marked CUB/CCSAO 2.04 in the errata of
6 January 26th, 2006 and as well as a Document 2.07
7 have both been marked -- are marked confidential, I
8 believe were filed as confidential.

9 **Q.** Mr. McGarry, turning your attention now to
10 your rebuttal testimony which has been previously
11 identified as CUB Exhibit 5.0, are there any
12 exhibits which have been identified, or should be
13 identified as confidential?

14 **A.** Yes, I believe the same, if I can thumb
15 through this quickly. Yes, an exhibit, which is
16 now marked CUB/CCSAO/City of Chicago 2.02, schedule
17 MJM 13.1, is confidential. And I believe that's
18 it.

19 **Q.** Mr. McGarry, I'm going to ask you a
20 question regarding your rebuttal testimony. If I
21 were to ask you any or all of the questions that
22 are identified in your rebuttal testimony, would

1 your answers be the same?

2 **A.** They would.

3 MR. NICKERSON: At this point in time, your
4 Honors, I would like to move CUB Exhibit 2.0 and
5 5.0 into evidence, with the understanding that we
6 are filing both a public and confidential version
7 of these exhibits.

8 JUDGE HALOULOS: Is there any objection? They
9 will be moved into evidence, then.

10 (Whereupon, CUB
11 Exhibits No. 2.0 and 5.0 were
12 admitted into evidence as
13 previously marked on e-docket as
14 of this date.)

15 MR. NICKERSON: In addition, I would like to
16 clarify that, as I previously stated on the record,
17 CUB Exhibit 2.0 has exhibits, which have been
18 identified as 2.0, 2.001, 2.003, 2.004, 2.005,
19 2.006, 2.007, 2.008, 2.009.

20 In addition, at this time, for
21 clarification, I would like to identify the
22 exhibits which have been attached to CUB

1 Exhibit 5.0, which has been previously identified
2 as rebuttal testimony of Michael J. McGarry,
3 Senior. Specifically there are rebuttal exhibits,
4 which have been previously identified and are
5 attached as Exhibit 5.01, Schedule MJM 0, MJM 1,
6 Schedule MJM 1, Schedule MJM 2, Schedule MJM 3,
7 Schedule MJM 4, Schedule MJM 5, Schedule MJM 6,
8 Schedule MJM 7, Schedule MJM 8, Schedule MJM 9,
9 Schedule MJM 10, MJM 11, MJM 12, MJM 13.1, MJM
10 13.2, MJM 14 and MJM 15.

11 That concludes my direct at this time,
12 thank you.

13 JUDGE DOLAN: Of these exhibits, what's marked
14 confidential?

15 MR. NICKERSON: Your Honor, with regards to the
16 direct testimony, that would be 2.04 and 2.07. And
17 with respect to rebuttal testimony, it's my
18 understanding it's exhibit -- excuse me, MJM 13.1,.
19 Of Exhibit 5.01. And Exhibit 5.0. I think that
20 covers all our bases. I hope it does.

21 JUDGE DOLAN: Any objection?

22 MR. RATNASWAMY: No.

1 JUDGE DOLAN: Okay, then, all of the exhibits
2 will be admitted into the record. Are you ready to
3 cross exam?

4 MR. RATNASWAMY: Yes. Good afternoon, your
5 Honor. I don't know if this morning anyone entered
6 my appearance, so I would like to do that now. My
7 name is John Ratnaswamy, R-a-t-n-a-s-w-a-m-y, from
8 the firm of Foley and Lardner, LLP, 321 North Clark
9 Street Suite 2800, Chicago, Illinois 60610. On
10 behalf of the Commonwealth Edison Company.

11 CROSS EXAMINATION

12 BY

13 MR. RATNASWAMY:

14 Q. First a few housekeeping things,
15 Mr. McGarry. In the exhibits which were just
16 admitted, I noted that Schedules 13.1 and 13.2 and
17 14 -- instead of saying Exhibit 5.01 at the top,
18 they say 2.02, is that a typographical error? At
19 least in the versions I was handed this afternoon.

20 A. Where it says in the version file, any of
21 the schedules that say file February 27th, that is
22 a typo, it should say 5.01.

1 **Q.** Thank you.

2 **A.** I'm not sure why that happened.

3 **Q.** Another preliminary matter, I would like to

4 check my understanding with you, is it correct that

5 the Citizens Utility Board and the Cook County

6 State's Attorney's Office and the City of Chicago,

7 along with Commonwealth Edison Company, have

8 reached an agreement, which I believe is supported

9 by the evidence, that the three entities on whose

10 behalf you're testifying will withdraw their

11 proposed adjustment to Com Ed's pro forma new

12 business capital additions and in turn Commonwealth

13 Edison Company will add a revenue credit to its

14 revenue requirement calculation in the amount of

15 \$13,751,325?

16 **A.** Yes, that's my understanding.

17 **Q.** Thank you. Mr. McGarry, are you an

18 accountant?

19 **A.** No, I am not.

20 **Q.** You do have some audit experience?

21 **A.** I do.

22 **Q.** The first thing I would like to talk with

1 you about is your testimony regarding amounts that
2 you referred to as being double counted, between
3 Com Ed's pro forma capital additions adjustment and
4 Com Ed's addition to rate base for construction
5 work in progress that is not accruing allowance for
6 funds used during construction.

7 First, let's start with those terms.
8 What is your understanding of the term, allowance
9 for funds used during construction or AFDUC?

10 **A.** My general regulatory knowledge of that is
11 that the interest that is applied to the investment
12 in funds, it's dollars spent on capital projects
13 before they're actually placed into service.

14 **Q.** Would it be consistent with your
15 understanding to think of that as sort of carrying
16 costs or the time value of money?

17 **A.** Fair enough, yes.

18 **Q.** And what is your understanding of the term
19 construction work in progress or CWIP?

20 **A.** CWIP is the bucket of dollars used to
21 record the actual expenditures of projects that the
22 company -- ongoing projects. It can be

1 construction, all construction related, it can be
2 just about anything can flow through Account 107.

3 Q. And when you refer to Account 107, are you
4 referring to the Federal Energy Regulatory System
5 Uniform System of Accounts?

6 A. I am.

7 Q. As to the amounts that you believe to be
8 double counted, I take it you want them removed
9 from somewhere, right?

10 A. That is correct.

11 Q. I take it also there is two possibilities,
12 it can come out of the pro forma adjustment for
13 capital additions or they can come out of the CWIP
14 addition; is that right?

15 A. Yes.

16 Q. And which of those two things did you
17 propose?

18 A. I proposed taking it out of the revenue
19 requirement, not out of the cap adds. I'm sorry,
20 out of rate base. I took it out of rate base, I
21 did not take it out of cap adds, the capital
22 additions.

1 **Q.** All right, let me try it another way,
2 because I am confused, then. Are you proposing to
3 disallow the CWIP amount, then?

4 **A.** Yes.

5 **Q.** And did staff witness Mr. Griffin make a
6 proposal somewhat along the same lines?

7 **A.** That is my understanding.

8 **Q.** And where did he propose to remove his
9 proposed adjustment from?

10 **A.** His, I believe, his adjustment was to the
11 test year pro forma.

12 **Q.** Okay. Is it correct that if the Commission
13 were to adopt one of those two adjustments, it
14 would be incorrect to adopt the other?

15 **A.** It would be incorrect to do them both.

16 **A.** Right.

17 **Q.** And why is that?

18 **A.** Because then you're taking out investment
19 in the plant that nobody is arguing has been spent.

20 **Q.** Has not been spent, right?

21 **A.** That has been spent.

22 **Q.** Okay, I think we understand. Do you agree

1 that a Com Ed -- you know what, when I read the
2 transcript, I'll kick myself, so let's try that
3 again. No one disputes the money has been spent;
4 is that correct?

5 **A.** That is correct.

6 **Q.** Do you agree that at Com Ed some of its
7 capital projects accrue AFUDC and some do not?

8 **A.** I believe that is correct. They have a
9 policy that allows AFUDC on projects greater than
10 6 months and \$25,000. Subject to check I believe
11 that's the --

12 **Q.** What is the base of that understanding?

13 **A.** A response to a DR or having been provided
14 a copy of that policy.

15 **Q.** How sure are you about the 6 months part of
16 it?

17 **A.** Subject to check, pretty -- it might be 3,
18 it might be 3 months. \$25,000 number I'm sure of.

19 **Q.** Is it correct that, assuming it was lawful,
20 you don't have any objection in principle to the
21 inclusion of non-AFUDC bearing CWIP in rate base?

22 **A.** Well, not being an attorney, I don't know

1 that I can answer the question on a lawful basis.

2 From a regulatory perspective, Illinois -- the
3 Commission has allowed CWIP in rate base in the
4 past and with respect to Com Ed, specifically.

5 **Q.** And do you have any objection in principle
6 to CWIP of that nature being included in rate base?

7 **A.** No.

8 **Q.** What is your understanding of the goal to
9 be achieved by including non-AFUDC and CWIP in rate
10 base?

11 **A.** My understanding would be that the Company
12 is attempting to recover what's earned and return
13 for its shareholders on that value of the CWIP
14 balance at the time it files its rates.

15 **Q.** And is it correct that if non-AFUDC bearing
16 CWIP were not allowed in rate base, then the
17 company would have no mechanism to recover the time
18 value of the money spent on those projects until
19 they are actually declared in service and put in
20 the rate base?

21 **A.** That is correct.

22 **Q.** Are you familiar with at what point in the

1 life of a capital project a utility starts to
2 accrue an appreciation on it?

3 **A.** I have to check, but I believe it is once
4 it's closed from 107 into Account 101, but I would
5 have to double check that.

6 **Q.** Do you agree that the pro forma capital
7 additions that Commonwealth Edison Company proposed
8 in this case are limited to projects placed in
9 service in the year 2005?

10 **A.** I believe that's correct.

11 **Q.** What is your understanding, if any, of
12 whether Com Ed could have proposed pro forma
13 capital additions for projects placed in service
14 through as late as August 31st, 2006?

15 MR. NICKERSON: I'm going to object, I believe
16 this question calls for speculation, for
17 information that Mr. McGarry has not testified to
18 in his direct or rebuttal testimony.

19 JUDGE HALOULOS: Sustained.

20 MR. RATNASWAMY: Well, my objective on cross is
21 in part to obtain information that was not included
22 in his direct or rebuttal testimony. But it's

1 relevant.

2 MR. NICKERSON: Your Honor, with all due respect,
3 adequate time is provided to issue data requests to
4 seek out and ferret out information that Com Ed and
5 its attorneys believe is relevant. This is cross
6 examination, not subject to wide scope, but to the
7 scope that is limited and to the substance of the
8 testimony that is provided on direct testimony by
9 Mr. McGarry in his rebuttal testimony.

10 JUDGE HALOULOS: Sustained.

11 BY MR. RATNASWAMY:

12 Q. As it happens, we did ask this data request
13 and Mr. McGarry did answer it.

14 A. I didn't know if I'm supposed to tell him
15 or not, I knew.

16 Q. Mr. McGarry, do you recall being asked in
17 Com Ed Data Request CCC-5.03?

18 A. I do.

19 Q. And did you provide a revised response to
20 that data request?

21 A. Under the advisement of counsel, yes.

22 Q. I'm not trying to belabor it, based on this

1 answer, is it correct that it is your understanding
2 that Com Ed had the ability to submit pro forma
3 adjustments for plant additions through August
4 31st, 2006?

5 MR. NICKERSON: I'm going to object to the form
6 of the question. Again, I believe it is outside
7 the scope of cross examination. Clearly, the
8 response has been stated. First CUB objects, so
9 I'm going to -- response to Com Ed CCC-5.03, CUB's
10 response is, CUB objects to this question as overly
11 broad and poses a hypothetical that is unclear.
12 Without waiving the aforestated objections, the
13 reference testimony speaks for itself and makes no
14 inference to matters that concern capital
15 additions.

16 MR. RATNASWAMY: Your Honor, I think one of the
17 reasons there is a revised response is because the
18 objection is incorrect. In fact, on Pages 12
19 through 17, Mr. McGarry is discussing nothing but
20 the alleged overlap of CWIP and capital additions.
21 In fact he uses the words capital additions in that
22 section of his testimony.

1 What we're trying to establish here is
2 that he is proposing a disallowance for a rate base
3 and we are trying to establish the point that, in
4 fact, we could have asked for 8 months more of
5 capital additions, and therefore his adjustment is
6 unfair.

7 JUDGE HALOULOS: Overruled.

8 THE WITNESS: So after all of that, could you
9 restate your question?

10 BY MR. RATNASWAMY:

11 Q. Sure. Is it your understanding that Com Ed
12 had the ability to propose a pro forma adjustment
13 for plant additions for the period January 1st
14 through August 31st of 2006?

15 A. My non-legal understanding of Section 287,
16 Part 4 of Title 83 says that, yes, they could have.

17 Q. Okay, thank you. Do you agree that Com Ed
18 in this case in calculating the amount of non-AFUDC
19 CWIP they proposed to include in rate base, used
20 the balance as of December 31st, 2004?

21 A. Yeah, I think the record states that.

22 Q. Do you agree that given the short-term

1 nature of the projects that make up non-AFUDC CWIP,
2 you would expect most, if not all, of the balance
3 as of December 31st, 2004 to be in the 2005 capital
4 addition?

5 **A.** I do.

6 **Q.** Would you have that same expectation if the
7 balance was the non-AFUDC CWIP figure as of June
8 30th, 2005?

9 **A.** Assuming that the types of projects that
10 were flowing through CWIP, the major blankets, the
11 size of those blankets had not substantially
12 changed in 6 months, and that it was just a matter
13 of the flow of the dollars, then, yes, your
14 hypothetical would be accurate.

15 **Q.** And would it be -- would you expect the
16 same thing -- I'm sorry, if the balance that had
17 been used for the non-AFUDC CWIP was December 31st,
18 2005, would you agree that you would not expect
19 there to be any overlap between those dollars and
20 the 2005 pro forma capital addition?

21 **A.** That would be less clear, maybe, maybe not,
22 depends on what projects were out there, what, you

1 know -- whether we had a series of small projects
2 that were taking a long time to implement, I don't
3 know the exact -- all of the exact projects that
4 were going in there. So to say a project would
5 have definitively been in -- on December 31st, that
6 was in there on January 1 of '04, I don't have any
7 information to say yes or no to that question.

8 **Q.** Okay. I think based on that, I must not
9 have phrased the question correctly. Let's say
10 Mr. Hill, the revenue requirement witness for Com
11 Ed, instead of using the December 31st, 2004
12 non-AFUDC CWIP balance, had used the number from
13 December 31st, 2005, so a year later, would you
14 expect there to be any double count, as you've used
15 that phrase, between the dollars in the CWIP
16 account at the end of 2004 and the pro forma
17 capital additions which are for products that were
18 placed in service in 2005?

19 **A.** So long as that -- the balances that were
20 reflected in the -- if Mr. Hill, hypothetically,
21 had shown the -- two things would have corrected
22 this problem. If cap adds, the capital additions

1 pro forma had shown the net increase from the
2 filing date in the trial balances to '04 had shown
3 that amount, the net between the trial balances and
4 what had occurred in the successive 6 months, and
5 then Mr. Hill showed a pro forma adjustment showing
6 the current or July 1st CWIP balance, the problem
7 would probably, subject to check, go away.

8 Q. Because, and I think you actually said this
9 earlier, but I want to double check, when a dollar
10 in Account 107 is a dollar for a project, that gets
11 declared in service is closed, it leaves Account
12 107 and goes to Account 101, right?

13 A. That is correct.

14 Q. Based on the data you've reviewed, what is
15 your opinion, if any, on whether Com Ed has a
16 normal level of non-AFUDC CWIP?

17 A. My rebuttal testimony is clear on this
18 issue, and I've submitted a chart that shows the
19 randomness of the level, both on a quarterly basis
20 and on an annual basis of that CWIP balance. And
21 it was just nothing more than a restatement of what
22 Mr. Hill, or one of the witnesses, Com Ed

1 witnesses, had provided in their testimony.

2 Q. Are you referring to the table that's on
3 Line 264?

4 A. Of my rebuttal, yes?

5 Q. Okay.

6 A. In my rebuttal, I said, it's definitely
7 normal, definitely recurring, the question is what
8 level. The variability of the level is the issue.

9 Q. And what was the average, according to your
10 table, is it \$52,501,033?

11 A. As shown at Column C, Line 21, that is for
12 the average of all of the quarters of all of the
13 data, including the annual average there. That's
14 highlighted kind of highlighted headlines 4, 8, 12,
15 16 and 20.

16 Q. And would you agree that the level that
17 Mr. Hill proposed to add to the rate base was
18 53,449,000?

19 A. Yes.

20 Q. I think you stated earlier, you're not an
21 attorney, right?

22 A. A couple of times.

1 **Q.** Did you -- to any extent whatsoever, is
2 your testimony based on any legal opinion about any
3 provision of the Public Utilities Act?

4 **A.** Restate that again.

5 **Q.** Well, let me make it narrower. Is any part
6 of your testimony based on a legal opinion about
7 Section 9-214 of the Public Utilities Act, which is
8 the section that talks about CWIP?

9 **A.** No.

10 **Q.** Have you reviewed many Illinois Commerce
11 Commission rate case orders?

12 **A.** Could you define many?

13 **Q.** More than 10?

14 **A.** Certainly.

15 **Q.** Are you aware of any ICC order in which the
16 Commission found that if the utility both proposed
17 pro forma capital additions and proposed non-AFUDC
18 CWIP, that the company had to deduct any
19 overlapping dollars on the same projects?

20 **A.** I can't say I'm aware of any.

21 **Q.** On Lines 161 to 172 of your rebuttal, you
22 refer to certain testimony of Mr. Costello and

1 Mr. Hill, regarding the subject of incentive
2 compensation; is that correct?

3 A. Yes, it is.

4 Q. And is it fair to say that what you're
5 saying there is that their testimony is consistent
6 with the position you're taking?

7 A. I'm not sure my testimony says that.

8 Q. Do you -- well, did you cite and quote
9 portions of it because you felt it supported your
10 position?

11 A. Yes, it does.

12 Q. Does that mean that you agree with the
13 portions that you cited and quoted?

14 A. As to the merits of the incentive comp?

15 Q. Well, for the exact points that you cited
16 and quoted in those lines, do you agree with it?

17 MR. NICKERSON: I'm going to object to the form
18 of the question. The form of the question is
19 somewhat vague. If counsel would be so kind as to
20 make the question more direct, specify, I think it
21 would be easier for the witness to answer.

22 MR. RATNASWAMY: Well, I'm asking him -- he cited

1 and quoted them on Lines 161 to 172. I'm asking if
2 he agrees with what he cited and quoted. I think
3 that's a fair question.

4 MR. NICKERSON: I'm going to reiterate my same
5 objection.

6 JUDGE HALOULOS: Overruled.

7 THE WITNESS: The point -- to ask me if I agree
8 with Mr. Hill and Mr. Costello on incentive comp
9 was not the point of my testimony here. If you
10 could point to me to where in my testimony I agree
11 with the merits of the incentive comp, I'll
12 certainly be able to answer the question.

13 BY MR. RATNASWAMY:

14 Q. Well, I'm not trying to ask you a question
15 about the merits of incentive comp generally, I'm
16 just asking you about the points that you yourself
17 noted on Lines 161 through 172.

18 MR. NICKERSON: Objection to the form of the
19 question. Again, I think the question is vague.
20 Are you asking the witness to express his opinion
21 for how these quotations was used, is that the
22 questioning you are asking him?

1 MR. RATNASWAMY: No, I'm asking him if they are
2 right or wrong. If you want me to put it another
3 way. Does he agree with what he quoted?

4 JUDGE HALOULOS: Overruled.

5 BY MR. RATNASWAMY:

6 Q. And cited. Do you agree with what you
7 quoted and cited on Lines 161 through 172?

8 A. What --

9 MR. NICKERSON: I'm going to object to the form
10 of the question, I don't think it's a clear
11 question. Obviously the witness is having
12 difficulty answering the question.

13 MR. RATNASWAMY: Well, there are different kinds
14 of difficulty.

15 MR. NICKERSON: And there are different kinds of
16 questions, ones that can be more precise.

17 MR. RATNASWAMY: I don't know what is more
18 precise than saying, is it right or is it wrong,
19 Counsel.

20 JUDGE HALOULOS: Is there any other way you can
21 phrase the question, Counsel?

22

1 BY MR. RATNASWAMY:

2 Q. Let's try again, here. Let's take a piece
3 for a moment. The sentence that begins on Line 163,
4 the one that begins with the words they argue. Is
5 their argument right or is it wrong?

6 A. A couple of things. My statement here, I
7 believe, is factually correct. They argue that as
8 a reward, part of their incentive comp is directly
9 related to meeting and exceeding productivity and
10 efficiency goals. I cite Mr. Costello's testimony,
11 I believe it's factually correct. I have no way of
12 knowing whether or not what -- whether or not their
13 testimony is correct.

14 Q. So when you cite it here, all you're saying
15 is if they're right, I'm right?

16 A. I believe the point of this testimony was
17 to talk -- was addressing the issue of
18 Mr. Costello -- Mr. DeCampli's testimony and the
19 inconsistency with what Mr. Costello and Mr. Hill
20 were submitting.

21 Q. So I take it you believe there is an
22 inconsistency between the testimony of Mr. DeCampli

1 on the one side and that of Mr. Hill and Costello
2 on the other side?

3 A. I believe I specifically state those words.

4 Q. But is it fair now to take away from this
5 colloquy that you are not going to say who is right
6 and who is wrong in any instances?

7 A. What I'm not prepared to do is to pass
8 judgment on whether incentive comp and the issue of
9 incentive comp is right or wrong.

10 Q. What about the specific points that you
11 cited and quoted?

12 MR. NICKERSON: I believe this question has been
13 asked and answered. I want to make an objection on
14 those grounds.

15 MR. RATNASWAMY: It's been asked. I don't think
16 it's been answered.

17 JUDGE HALOULOS: Ask the question one more time
18 and the witness can answer the question this time.

19 BY MR. RATNASWAMY:

20 Q. You are saying the testimony is
21 inconsistent between Mr. DeCampi and Mr. Hill and
22 Costello on the other side, so which side is right?

1 **A.** The point of my rebuttal testimony was to
2 show that company executives, Mr. Costello and
3 Mr. Hill were advocating that as part of their part
4 of the incentive comp program they incent their
5 workers to reduce O and M, which was inconsistent,
6 in my opinion, with what Mr. DeCampli said, that
7 expenses were going to go up. Or as he put it,
8 we've gotten all we can get, inferring that they
9 were no longer going to go down.

10 **Q.** Do you know -- did you review the order in
11 Commonwealth Edison Company's last delivery service
12 and rate case, the most recent one, in other words?

13 **A.** 01-0423?

14 **Q.** Yes.

15 **A.** Yes, many pieces of it, maybe not the whole
16 thing.

17 **Q.** Do you know what level of distribution of O
18 and M expenses was approved by the Commission in
19 that case?

20 **A.** I'm aware of it, generally, I don't know
21 the exact number and I don't have it in front of
22 me.

1 **Q.** Is it fair -- I'm sorry, is it consistent
2 with your recollection that it is approximately
3 \$37 million more than Com Ed asked for in this
4 case?

5 **MR. NICKERSON:** I'm going to object to the form
6 of the question. The witness has testified he
7 doesn't have the document in front of him, he
8 doesn't recall the exact number. If counsel would
9 be so kind as to present the document to the
10 witness, we can verify and perhaps he can answer
11 your question.

12 **MR. RATNASWAMY:** I don't think I need to mark it
13 because it's an Appendix to a Commission order.
14 Here Appendix A, Schedule 1 of the Commission's
15 final order in Docket 01-0429.

16 **THE WITNESS:** I believe I'm set, I think I have
17 the information I need in front of me, I think.

18 **BY MR. RATNASWAMY:**

19 **Q.** Did you review the Appendix to the order in
20 the last case when you were reviewing the order?

21 **A.** I believe so, yes.

22 **Q.** Does this refresh your recollection as to

1 the level of distribution of O and M accrued in the
2 last case?

3 A. Referring to which column, the approved pro
4 forma?

5 Q. Column F, Line 6?

6 A. Yeah, 314,463,000, yes.

7 Q. And that's 314,453,000?

8 A. That's correct.

9 Q. And you were proposing in this case a
10 disallowance of approximately \$13 million of
11 distribution of O and M expenses; is that right?

12 A. That is correct.

13 Q. Would you agree that Com Ed's going in
14 number in this case, what it asked for, is
15 approximately 37 million less than what was
16 approved in the last case?

17 A. Based on subject to check, I'm looking at
18 Schedule A5 of the Company's errata and I believe
19 there may be another change after this, but if
20 we're referring to the total company unadjusted --
21 I'm sorry, the going in number, if you're referring
22 to Column C of Schedule A5 in Mr. Hill's testimony,

1 again, subject to check, that's 14 -- yeah, that
2 would be roughly 37 -- some number in that
3 ballpark, without taking a calculator to it.

4 Q. Are you familiar with the amounts of
5 incentive compensation approved in the last case
6 and proposed in this case?

7 A. I am not.

8 Q. Please refer to Lines 381 to 408 of your
9 rebuttal testimony.

10 A. 381?

11 Q. 381 to 408, please.

12 A. Okay.

13 Q. Is it correct you contend that certain of
14 Com Ed's proposed rate case expenses are not known
15 and measurable?

16 A. That is correct.

17 Q. What is the standard you are applying there
18 as to whether an expense is known and measurable?

19 A. I believe the requirement is, in 287.4,
20 there has to be some study analysis, contract,
21 signed contract, documentation which basically
22 supports the adjustment, a pro forma adjustment,

1 going forward.

2 Q. Does the same standard apply when the
3 standard is going to increase or decrease the
4 amount of revenue requirement?

5 A. I believe there is no distinction in the
6 287.4, I don't believe there is any distinction, so
7 yes, it would have to do with both sides.

8 Q. Please refer to Lines 448 to 459 of your
9 rebuttal. Is it correct there that you are
10 proposing an adjustment related to the Company's
11 uncollectible expenses in its revenue requirement?

12 A. Yes.

13 Q. Do you agree that in your chart, on Page 26
14 of your testimony, that that chart shows an upward
15 trend in Com Ed's uncollectibles percentage?

16 A. Which -- could you give me the line number
17 you're looking at.

18 Q. The one that is on 512, starts on 512?

19 A. When you look at -- yes, that chart does
20 show a slightly uphill line. It's not marked a
21 trend line, but that's what it infers, when you
22 start with the uncollectibles expense as a percent

1 of operating revenues at 2000.

2 Q. Okay. If you could go back to Lines 495 to
3 496, please. There you reference a particular
4 staff schedule, do you see that?

5 A. I cite using the data of staff's Schedule
6 2.5.

7 Q. Do you have a copy of that schedule?

8 A. I don't believe I have it. If I have it --
9 I'm not sure I have -- no, I do not have her
10 testimony -- I have her direct, I do not have her
11 rebuttal.

12 Q. 2.5 is from her direct.

13 A. Oh, I'm sorry. I don't believe I have it,
14 I have schedule -- let me see if I can find it. I
15 don't have it. I thought I had it, I don't.

16 Q. Do you remember this schedule?

17 A. I do and I have it electronically.

18 Q. Do you agree that if one averaged the
19 dollar amount of Com Ed's uncollectible expenses
20 over that period, that the average would be 44.4
21 million?

22 A. Again, starting with 2000 -- I believe,

1 subject to check, it looks about right. Without a
2 calculator and without having to go through the
3 math, I'll accept it, subject to check.

4 Q. And that is between 6 and \$7 million more
5 than Com Ed has asked in its revenue requirement;
6 is that correct?

7 A. I've got to write it down, say it again.

8 Q. Do you agree that the average for that
9 five-year period is between 6 and \$7 million higher
10 than the amount Com Ed proposed to include in its
11 revenue requirement?

12 A. Again, I would have to check the numbers,
13 but yes.

14 Q. Do you recall being asked a data request
15 about why, if rate case expenses are amortized over
16 a period of years, utilities should not recover
17 carrying costs?

18 A. I recall it, yes.

19 Q. And is it correct the sole reason you gave
20 is that it was your understanding that the ICC has
21 not generally allowed, as a rule, the carrying of
22 such recovery costs?

1 **A.** That is my understand being, yes. With the
2 exception of, I believe 01-0423, which there was,
3 if I remember, the recollection was that -- my
4 response was with the exception of 01-0423, which
5 was allowed.

6 **Q.** Thank you. If you could turn to Line 665
7 to 666 of your rebuttal, please.

8 **A.** What number, again?

9 **Q.** 656 to 666?

10 **A.** I'm there.

11 **Q.** And is it correct that you say there, my
12 recommendation does just that by seeking an audit
13 of the pricing terms and conditions as set forth in
14 the GSA. Just for clarity, what is the GSA?

15 **A.** General services agreement, between Com Ed
16 and Exelon or the BSC company.

17 **Q.** Would you agree that in your direct what
18 you proposed was an evaluation, quote, evaluation,
19 unquote, that you did not use the word audit?

20 **A.** I would have to go back and look at the
21 testimony, but that may be true.

22 **Q.** Do you agree that an evaluation is not

1 synonymous with an audit?

2 **A.** In my direct I was -- my direct
3 recommendation was that the Commission conduct an
4 evaluation, order an evaluation. My inference was
5 analogous to an audit. While I may not have
6 specifically said that the Commission should order
7 an audit, they -- I did infer that the Commission
8 should order an evaluation, which is analogous to
9 an audit, which would result, in all likelihood, as
10 an audit.

11 **Q.** Do you agree that in neither your rebuttal
12 nor your direct did you propose any timing for this
13 audit?

14 **A.** That is correct.

15 **Q.** And would you also agree that you did not
16 propose any details about the nature of the audit?

17 **A.** No, I wouldn't agree with that. I agree --
18 my rebuttal states clearly that they need to
19 check -- need to order an evaluation and audit to
20 renew the pricing of the terms that are set forth
21 in the service level agreement charters. And I
22 cited a confidential example of the charges that

1 should be -- types of things that should be
2 included. So no, I don't agree with your premise.

3 Q. Do you recall being asked a data request
4 about your proposals?

5 A. Yes.

6 MR. RATNASWAMY: Your Honor, there may have been
7 discussion but I wasn't present for it, I don't
8 know how you want cross exhibits numbered. I don't
9 know if you want it to be one higher than the
10 party's last exhibit or do you want us to just
11 start at 1?

12 JUDGE HALOULOS: Start at 1.

13 MR. RATNASWAMY: So could I mark this as Com Ed
14 Cross Exhibit 1, please.

15 (Whereupon, Com Ed Cross
16 Exhibit No. 1 was
17 marked for identification
18 as of this date.)

19 BY MR. RATNASWAMY:

20 Q. Is this a data request that you were asked,
21 Mr. McGarry, relating to your data?

22 A. Yes, it is.

1 **Q.** And is the answer stated there the answer
2 that you gave?

3 **A.** Yes.

4 **Q.** Did you intend it to be a complete and
5 accurate answer?

6 **A.** At the time when I answered this, I
7 provided basically to answer this request, where in
8 the direct testimony have you proposed any details
9 of the timing or nature of the audit that you
10 propose of the pricing terms and conditions set
11 forth in the general services agreement, please be
12 specific.

13 My response only goes to the issue of
14 details, having proposed any details. So your
15 question, was it a complete response, in retrospect
16 looking at it, you have asked, the Company, also
17 asked me to describe the nature of the audit. To
18 that, I probably would refer you back to my last
19 answer and your last question.

20 **Q.** Okay. The question I just asked you,
21 though, was at the time you answered this, did you
22 intend it to be an accurate and complete answer?

1 **A.** Yes, that was my intent.

2 **Q.** In your direct testimony, you refer to a

3 data request that CUB asked, relating to obtaining

4 a working electronic copy of the Company's Part 285

5 file. Do you remember that?

6 **A.** Yes, I do.

7 **Q.** And you site the response that Com Ed gave

8 to CUB Data Request 4.01; is that right?

9 **A.** That's correct.

10 **Q.** You did not attach that response to your

11 testimony?

12 **A.** I believe it is. It's identified in the

13 testimony as CUB 2.09.

14 **Q.** I'm sorry. Is it attached?

15 **A.** I believe it is. It was provided on the --

16 now, again, it was corrected on the errata filing

17 in late January, the response was actually

18 provided. The original filing did not include -- I

19 believe it only included the actual request -- or

20 actually the whole series of 4.1 through 4,

21 whatever we had, and did not include the response.

22 On the errata filing at the end of the January we

1 did submit the response. And I do have a copy of
2 it here, but it's not marked with the appropriate
3 header. It's right here.

4 Q. Okay. I'm not clear, then, on whether this
5 has already been admitted when his direct and
6 rebuttal was admitted or not. It's not in the
7 copies I was handed this morning, so that's why I'm
8 asking.

9 A. You are looking at the original filing from
10 December 23rd or 22nd, whenever it went in. The
11 errata version on the 26th of January included the
12 response.

13 MR. RATNASWAMY: In that case, I have have no
14 further questions and I thank you for your time.

15 THE WITNESS: Thank you.

16 MR. RATNASWAMY: Your Honor, I do move the
17 admission of Com Ed Cross Exhibit No. 1.

18 JUDGE HALOULOS: Any objection?

19 MR. NICKERSON: No objection. Your Honor, at
20 this time I wanted to clarify for our own piece of
21 mind, for lack of a better phrase, that all of
22 CUB's exhibits have been admitted into the record

1 of evidence.

2 JUDGE HALOULOS: Com Ed's exhibits as well as
3 CUB's exhibits are admitted into the record.

4 (Whereupon, Com Ed Cross
5 Exhibit No. 1 was
6 admitted into evidence as
7 of this date.)

8 MR. NICKERSON: Thank you, can I have just a
9 brief moment?

10 (Break taken.)

11 JUDGE HALOULOS: Are we ready to proceed?

12 MR. NICKERSON: We are, thank you very much for
13 indulging us in a short recess, we appreciate it.

14 REDIRECT EXAMINATION

15 BY

16 MR. NICKERSON:

17 Q. I have a few questions for you,
18 Mr. McGarry, on redirect.

19 First question, I would like to draw
20 your attention to, or actually relate to your
21 rebuttal testimony, specifically at Page 26,
22 beginning at Line 512. I believe that opposing

1 counsel Attorney Ratnaswamy asked you a question
2 regarding this chart and whether the trend was that
3 uncollectible expenses were increasing; is that
4 correct?

5 **A.** That is correct.

6 **Q.** Do you have any further comments on the
7 chart?

8 **A.** Yes, I would. I would like to point out
9 that if you isolate on -- beginning in 2002, the
10 trend line is significantly downward. And that
11 corresponds to the Company's testimony that it has
12 improved the collection practices and as stated
13 both by the Company and by staff witness Hathhom.

14 **Q.** Com Ed Attorney Ratnaswamy asked you a
15 question on cross examination with respect to
16 whether you were aware of any ICC docket where the
17 Commission proposed overlap for CWIP and cap
18 additions. Are you aware of any Commission order
19 whereby the Commission recommended a double count
20 of CWIP and capital additions?

21 **A.** To my knowledge, the Commission has not
22 allowed an overlap of CWIP projects.

1 **Q.** There were a series of questions posed by
2 Attorney Ratnaswamy with respect to an inconsistent
3 position that was taken by Mr. DeCampi on the one
4 hand and Mr. Hill and Mr. Costello on the other
5 hand. Do you have any further comments on that
6 subject?

7 **A.** Yes, I just want to be clear that my
8 testimony was not aimed at the merits of incentive
9 comp and the levels that are being discussed by
10 other witnesses in this case. My, as I stated, and
11 I'll restate here, just so we're clear, my point
12 was to say that the Company executives are fighting
13 hard for incentive comp and at the same time --
14 using a justification of lower O and M, which was
15 inconsistent with what Mr. DeCampi is proposing in
16 his testimony.

17 **Q.** One final question for you, again, Attorney
18 Ratnaswamy asked you several questions regarding
19 what is known in this proceeding as the general
20 service agreement between Exelon and Com Ed. Do
21 you have any further testimony that you would like
22 to provide on that subject?

1 MR. RATNASWAMY: I have to object to that one,
2 your Honor. That is really not a redirect
3 question.

4 JUDGE HALOULOS: Sustained. Pose a question.

5 BY MR. NICKERSON:

6 Q. Certainly, let me rephrase the question.
7 Mr. McGarry, isn't it true that during direct --
8 excuse me, during cross examination Mr. Ratnaswamy
9 asked you some questions regarding the general
10 service agreement?

11 A. He did.

12 Q. In fact, isn't it also true that
13 Mr. Ratnaswamy asked you several questions with
14 respect to whether you recommended that the
15 Commission audit or perform an audit of a general
16 service agreement?

17 A. That is correct.

18 Q. At this point in time, with respect to the
19 testimony, which is contained in your rebuttal, do
20 you have any further comments or testimony with
21 respect to the Commission's audit original service
22 agreement?

1 MR. RATNASWAMY: I'm sorry, your Honor, I do have
2 to object again. The whole point of that discovery
3 was to flesh out details. We should not hear new
4 details of the proposal now.

5 MR. NICKERSON: Your Honors, with due respect,
6 I'm not asking to introduce any new details, simply
7 to clarify points that were left unclarified on
8 cross examination.

9 JUDGE HALOULOS: Overruled.

10 THE WITNESS: Again, as I stated in my rebuttal,
11 the -- my recommendation was that the -- the
12 Commission use its audit powers to go in and
13 evaluate the service level agreements that generate
14 the costs that are now flowing through to Com Ed.
15 And I provided specific sites and example of the
16 kinds of things that would be under review in terms
17 of pricing, the dollars per check processed, which,
18 and the data that is in there is confidential, but
19 the magnitude are millions of dollars in just that
20 one example.

21 So basically that's what my
22 recommendation was, for the Commission to use its

1 audit powers to go in and make sure of the fairness
2 of those -- that pricing, which covers many, many,
3 many services that Com Ed's ratepayers are asked to
4 bear.

5 MR. NICKERSON: Thank you, I have no further
6 questions at this time.

7 JUDGE HALOULOS: Anything further?

8 MR. RATNASWAMY: No further questions, your
9 Honor.

10 JUDGE DOLAN: Thank you, Mr. McGarry.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 JUDGE DOLAN: We're going to take a break until
14 4:00 o'clock and then we're going to start backup.

15

16

17

18 (Change of reporters.)

19

20

21

22

1 (Whereupon, there was a
2 change of reporter.)

3 JUDGE DOLAN: We're going to go back on the
4 record. Are we ready to present our next witness?

5 MR. THOMAS: I don't believe an appearance was
6 entered for me this morning. My name is Dale
7 Thomas. I'm with the law firm of Sidley Austin,
8 LLP, One South Dearborn Street, Chicago, Illinois,
9 60603. I'm here representing Commonwealth Edison,
10 and I'm specifically here to present Commonwealth
11 Edison's next witness, Ms. Katherine Houtsma.

12 JUDGE DOLAN: Ms. Houtsma, please raise your
13 right hand.

14 (Witness sworn.)

15 KATHERINE M. HOUTSMA,
16 called as a witness herein, having been first duly
17 sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY

20 MR. THOMAS:

21 Q. Ms. Houtsma, would you state your name for
22 the record.

1 **A.** Katherine M. Houtsma.

2 **Q.** By whom are you employed?

3 **A.** Commonwealth Edison Company.

4 **Q.** What is your position there?

5 **A.** My position is vice president, regulatory
6 projects.

7 **Q.** Ms. Houtsma, did you file any direct
8 testimony in this proceeding?

9 **A.** No.

10 **Q.** Did you file rebuttal testimony and
11 surrebuttal testimony in this proceeding?

12 **A.** I did.

13 **Q.** Ms. Houtsma, I would like to show you a
14 document which has been marked ComEd Exhibit 18.0.
15 It is entitled rebuttal testimony of Katherine M.
16 Houtsma, CPA, vice president, regulatory projects,
17 Commonwealth Edison. It's dated January 30th,
18 2006. It consists of a table of contents, 30 -- 28
19 pages of questions and answers and one, Exhibit
20 18.1.

21 Ms. Houtsma, is this your rebuttal
22 testimony in this proceeding?

1 **A.** Yes, it is.

2 **Q.** And do you have any corrections to this
3 rebuttal testimony?

4 **A.** No.

5 **Q.** If I were to ask you the questions that are
6 contained in this rebuttal testimony, would your
7 answers be the same?

8 **A.** Yes.

9 **Q.** Are those answers true and correct to the
10 best of your knowledge and belief?

11 **A.** Yes, they are.

12 **Q.** Let me now turn to a second document which
13 has been marked ComEd Exhibit 35.0. It is entitled
14 surrebuttal testimony of Katherine M. Houtsma, CPA,
15 vice president, regulatory projects, Commonwealth
16 Edison Company, March 14th, 2006. It consists of a
17 table of contents, 30 page of questions and
18 answers, and five exhibits marked 35.1 through
19 35.5.

20 Ms. Houtsma, is this document your
21 surrebuttal testimony in this proceeding?

22 **A.** Yes, it is.

1 **Q.** Do you have any corrections to this
2 testimony?

3 **A.** I have one correction to Exhibit 35.3, Page
4 101.

5 **Q.** What is that correction?

6 **A.** On line 8 the caption reads total 2005
7 pension cost dash O&M and capital. The words and
8 capital should be stricken.

9 MR. THOMAS: If I may, here's a copy for each of
10 the hearing examiners. And, Mr. Hearing Examiner,
11 for the record, we found out about this correction
12 this morning. We will submit a new exhibit of the
13 surrebuttal testimony which will contain this
14 corrected exhibit by E Docket.

15 JUDGE DOLAN: That's fine.

16 MR. THOMAS: Q With that correction, if I were
17 to ask you the questions which are contained in
18 this surrebuttal testimony, would your answers be
19 the same?

20 **A.** Yes.

21 **Q.** Are those answers true and correct to the
22 best of your knowledge and belief?

1 **A.** Yes, they are.

2 MR. THOMAS: I hereby move into evidence ComEd

3 Exhibit 18 and ComEd Exhibit 35, and I tender

4 Ms. Houtsma for cross-examination.

5 JUDGE DOLAN: Any objection?

6 MS. SODERNA: No objection.

7 MR. FOSCO: We have no objection, but actually

8 when we do ask questions, a couple of them are

9 going to go to some foundation issues. So as long

10 as it's not without waiving our right to strike if

11 it turns out that there's no foundation issues.

12 MR. THOMAS: We have no objection if he actually

13 raises a foundation issue later. I think it's

14 appropriate, but it would be -- the document should

15 be admitted into evidence, I believe.

16 MR. FOSCO: That's fine. I don't...

17 MR. THOMAS: Subject to striking whatever

18 portions you're able, if any.

19 MR. FOSCO: If any.

20 JUDGE DOLAN: Subject to that, rebuttal Exhibit

21 No. 18.0 and surrebuttal Exhibit 35.0 are admitted

22 into evidence.

1 (Whereupon, ComEd
2 Exhibit Nos. 18 and 35 were
3 admitted into evidence as
4 of this date.)
5 JUDGE DOLAN: You can proceed, Counsel.
6 CROSS-EXAMINATION
7 BY
8 MS. SODERNA:
9 Q. Hello, Ms. Houtsma; is that correct?
10 A. Right.
11 Q. I'm Julie Soderna, and I represent the
12 Citizens Utility Board. I'll be asking you some
13 questions regarding the Exelon general services
14 agreement and the corporate governance charges.
15 Adjustment.
16 I'll start with the governance charges
17 adjustment. And in both your rebuttal and
18 surrebuttal testimony, you take issue with certain
19 adjustments made by staff witness Ms. Hathhorn and
20 CUB CCSAO City witness Mr. McGarry; is that
21 correct?
22 A. That's correct.

1 **Q.** One of those proposed adjustments on behalf
2 of staff -- and I'll call the three entities CCC
3 just for shorthand.

4 **MR. THOMAS:** That works for me.

5 **MS. SODERNA:** **Q** One of the proposed adjustments
6 on behalf of staff and CCC was that the company use
7 actual 2004 data to develop certain allocators; is
8 that correct.

9 **A.** I know that it is correct with respect to
10 staff, so yes.

11 **Q.** Okay. And the allocators that I'm
12 referring to were to calculate the corporate
13 governance cost allocation for ComEd, correct?

14 **A.** Correct.

15 **Q.** Referring specifically to your rebuttal
16 testimony, Page 5, lines 93 through 105, are you
17 there?

18 **A.** Yes.

19 **Q.** You state that it is Exelon Business
20 Service Company --

21 **A.** Correct.

22 **Q.** Corporation, Company?

1 **A.** Business Services Company.

2 **Q.** Business Services Company or BSC, that it's
3 Exelon BSC's practice to use the modified
4 Massachusetts formula to calculate its corporate
5 governance allocation factor; is that correct?

6 MR. THOMAS: Excuse me. I'm going to object,
7 and I don't like to object, but I don't believe it
8 says that it's the practice to use the MMF. I
9 think the testimony is quite clear it is required,
10 so that I believe you need to read the whole
11 sentence.

12 MS. SODERNA: Q Why don't I read the whole
13 sentence in the record.

14 Well, it says Exelon BSC's policy has
15 been to use forecasted inputs prepared prior to the
16 start of the year to calculate the allocation
17 factors that it uses for that year.

18 That's what you said, correct?

19 **A.** That's correct.

20 **Q.** Okay. Just so we're clear.

21 And the methodology referred to the --
22 we'll call it for shorthand MMF methodology -- it

1 amounts to basing the cost allocators on budgeted
2 data rather than actual data; is that correct?

3 **A.** There are three factors involved, and two
4 of the factors, the practice is to use budgeted
5 data because the actual data is not available at
6 the time --

7 **Q.** Right.

8 **A.** The third factor is based on the actual
9 historical asset balances.

10 **Q.** So maybe I should clarify the allocators
11 are produced using the budgeted information, and
12 then when the costs are applied to the allocators,
13 it's the actual costs that are applied to those
14 allocators.

15 Is that a fair way of surmising it?

16 **A.** Actual costs are used, and they're
17 allocated using a factor that has three components.
18 And two of those three components are based on
19 forecasted factors for --

20 **Q.** Fair enough.

21 **A.** -- for the year at issue. The third
22 component which is total assets is used most --

1 it's the most recent historical data going into the
2 end of the year. So it's an actual input as
3 opposed to a forecast.

4 **Q.** Okay. Thanks for that clarification.

5 So just to clarify kind of in general
6 that that methodology means that the cost
7 attributed to 2004 test year in this proceeding are
8 based at least in part on budgeted information from
9 2003; is that correct?

10 The allocation -- the allocators, as you
11 just said, that are based upon budgeted -- or I'm
12 sorry, budgeted or forecasted information?

13 **A.** The factor itself includes the use of some
14 forecasted data. The costs that are allocated are
15 actual costs incurred.

16 **Q.** Thank you.

17 **A.** And I guess just to be totally clear, the
18 costs that are included in the test year are the
19 actual costs that are billed to ComEd.

20 **Q.** Right.

21 The allocators that are used to divide
22 up those costs use the projected -- there are

1 projected information in that -- in those
2 allocators?

3 A. That's correct, the inputs to the
4 allocation factor are --

5 Q. I think we've got it.

6 I'd like to mark this cross exhibit CUB
7 Cross Exhibit 1. This is Commonwealth Edison's
8 response to Staff DLH 7.04.

9 JUDGE DOLAN: Do you want to mark this only CUB
10 or CCC?

11 MS. SODERNA: I can do it CCC, sorry.
12 Correction. We will mark that as CCC Exhibit Cross
13 Exhibit 1.

14 Q. Now, this is a response, the company's
15 response to a request from staff to provide revised
16 allocation factors using historical or actual data;
17 is that right?

18 MR. THOMAS: Could you repeat that question,
19 please.

20 MS. SODERNA: Q I can restate the request, but
21 I just was summarizing it to ask for the staff's
22 request to -- for the company to provide revised

1 allocation factors and allocation percentages based
2 on historical December 31st, 2004 data. That's
3 what was requested?

4 **A.** That's correct.

5 **Q.** In your response -- or, sorry, in the
6 company's response, it states when possible,
7 projected values for the upcoming budget are
8 generally used when available. Historical values
9 are used when budget information is not readily
10 available.

11 Is that correct?

12 **A.** Correct.

13 **Q.** Have you reviewed this discovery response
14 in preparation for trial?

15 **A.** Yes, I am familiar with it.

16 **Q.** You're familiar with it. Okay, great.

17 So in general the budget information --
18 in your response it seems to say that budget
19 information is essentially the default with regard
20 to generating these allocation factors as opposed
21 to actual data; is that correct?

22 Projected values are generally used when

1 available?

2 **A.** Projected values are used when available,
3 that's correct.

4 **Q.** And those would be used -- even if actual
5 data was available, projected values would be used?

6 **A.** Well --

7 **Q.** Their preference would be to use projected
8 values?

9 **A.** The factors are developed at the end of the
10 year as part of the budget process, and so at the
11 end of -- the factors for the following year are
12 developed. So actual data for the following year
13 is by definition not available at that point in
14 time so we use the forecast to the extent that we
15 have a forecast. If the forecast for the following
16 year is not available, then historical data is used
17 as the default. It's an attempt to try to get
18 things as accurate as possible.

19 **Q.** I'm going to put things more in layman's
20 terms.

21 So the company -- along the lines of
22 your response, the company does not then make a

1 practice of going back and sort of truing up the
2 allocators with actual -- using actual data. They
3 the allocators remain the same after -- even when
4 the actual data is available; is that correct?

5 **A.** There is a review that is performed.
6 Unless they're materially different, they're
7 generally not updated because...

8 **Q.** Okay. This -- we're speaking still about
9 essentially what is the MMF methodology which is
10 what you summarized in the beginning of our
11 discussion, right?

12 **A.** Well, this data request is not --

13 **Q.** I'm sorry. I'm no longer referring to the
14 data request. I'm referring to your testimony
15 about the way these allocators were developed.

16 **A.** Okay.

17 **Q.** And that you had said that was -- the
18 methodology that was used was this Massachusetts?

19 **A.** The Massachusetts formula is used to
20 allocate corporate governance cost as opposed to
21 this request is asking for all allocation factors
22 for all costs over the BSC, so it's much broader.

1 **Q.** The MMF methodology of -- moving away from
2 the data response -- that you stated is required by
3 the SEC for reporting purposes, for SEC reporting
4 purposes, for accounting purposes --

5 **A.** Well, for the purpose of allocating
6 business services company costs to the companies --
7 the system holding company.

8 **Q.** To your knowledge, this method of
9 developing allocators based on budget information
10 rather than actual information is not something
11 that's required by the Illinois Commerce
12 Commission; is that right?

13 **A.** Your question is is using budgeted
14 information required by the Illinois Commerce
15 Commission?

16 **Q.** Right.

17 **A.** No, that's not the requirement. It's more
18 of a practical -- practical matter.

19 **Q.** But you don't testify, though, that using
20 actual data to produce allocators -- if you were to
21 use actual data to produce the allocators, if you
22 were to go back after that data was available and

1 produce allocators using actual data, you don't
2 testify that that -- I'm sorry, for purposes of
3 this proceeding, for example -- you don't testify
4 that that practice would violate the SEC
5 requirements; is that correct?

6 **A.** For -- when you say for purposes of this
7 proceeding, are you asking that if rates were to be
8 based on an allocation method that reflected actual
9 data for inputs, is that a violation of an SEC
10 requirement?

11 **Q.** Right.

12 **A.** I don't believe so.

13 **Q.** Referring to your surrebuttal testimony --
14 I'm sorry. Moving on to Page 4, your surrebuttal,
15 lines 78 and 79, you state in reference to
16 Ms. Hathhorn, staff witness Ms. Hathhorn's
17 corporate governance charges adjustment, you state
18 her adjustment violates test year principles and
19 that it would result in a departure from cost based
20 rates; is that right?

21 **A.** Correct.

22 **Q.** But, in fact, the allocators the company

1 uses are based on budgeted or projected data as we
2 spoke about earlier and not actual data; is that
3 right?

4 **A.** The allocators are based on budgeted data.

5 **Q.** That was --

6 **A.** But the reason that it is a violation of
7 test year principles is that the costs that are
8 billed to ComEd are not based on actual data.
9 They're based on the projected data. So ComEd is
10 trying -- is simply requesting recovery of the
11 costs that are actually billed to ComEd by the BSC,
12 and those are based on the -- on the forecasted
13 inputs.

14 **Q.** But -- I understand your clarification, but
15 the costs embedded in that number that you just
16 described are in part based on projected data?

17 **MR. THOMAS:** Could we clarify for the record
18 that number what specifically you're referring to.

19 **MS. SODERNA:** Q The -- well, the cost based
20 rates that you referred to. You call
21 Ms. Hathhorn's -- you claim that Ms. Hathhorn's
22 adjustments result in a departure from cost based

1 rates, and I think I just heard you explain it's a
2 departure from cost based rates. Maybe you can
3 explain that again.

4 **A.** That's correct. And, you know, what ComEd
5 has included in the test year are the actual costs
6 that have been billed to ComEd by BSC. And the
7 fact that whether BSC uses a forecasted data to
8 compute the allocation factors or uses actual data,
9 you know, our position is that we are entitled to
10 recover the costs. And the costs are the costs
11 that are actually billed by BSC.

12 **Q.** You believe that Ms. Hathhorn's adjustment
13 deprives you of the ability to recover actual costs
14 because of the methodology that she employs?

15 **A.** It calculates a BSC billing number that is
16 less than what BSC is actually billing. Even
17 though there's no -- she's not recommending any
18 change in the way that the billing occur, she's
19 just suggesting that costs recovery be based on
20 something less than what is actually billed.

21 **Q.** Really what you're saying is because her
22 methodology changes the allocator, that changes the

1 cost that you're allowed to recover is the gist of
2 what you're saying?

3 MR. THOMAS: I'm going to object. I think
4 questioning in which you try to characterize the
5 witness's testimony really should be done. Her
6 answer speaks for itself. If you want to follow up
7 with what she meant by her answer, I think that's
8 fine. But otherwise I do object because in many
9 cases, the answer -- your new question is
10 mischaracterizing what she said.

11 MS. SODERNA: I guess the witness --

12 MR. THOMAS: I'm not saying --

13 MS. SODERNA: I'm just trying to get at what she
14 meant by violating test year principles and
15 departing from cost based rates, and I'm just
16 trying to summarize what she was saying.

17 MR. THOMAS: No problem.

18 MS. SODERNA: Apparently I didn't do it very
19 well.

20 Q. You said that -- I'll go back to your
21 response before the objection when you explained
22 why it was a departure from cost based rates. I

1 think I understand you, but I guess I'm going back
2 to the point the actual costs that you feel
3 ComEd -- the company, the regulated company feels
4 it's entitled to recover are nonetheless based on
5 budgeted information that's embedded in those
6 allocation factors as we said before, correct?

7 **A.** The budgeted information is used to develop
8 the allocation factor, yes.

9 **Q.** So if the allocators change, the
10 allocator -- if the methodology for developing the
11 allocators changes, then the actual costs that
12 result from the calculation will change?

13 **A.** Yes, if the allocator changes, then the
14 amount that is allocated to ComEd would change.
15 But in this case, the allocator that is actually
16 used to bill ComEd is based on the forecasted data.
17 So Ms. Hathhorn -- and Ms. Hathhorn is not
18 suggesting that that be changed. She's just
19 suggesting that for rate purposes a different
20 factor be used.

21 **Q.** Okay.

22 **A.** That's -- that's where there's an implicit

1 disallowance of a cost that is billed to ComEd.

2 **Q.** It is possible, though, for the company to
3 go back and sort of regenerate those allocators
4 based on actual data if and when that actual data
5 is available, correct?

6 **A.** It's possible to do the calculation. As
7 practical matter, it's -- the reason that it's not
8 used is because that data doesn't become available
9 until after the books are closed so you have to go
10 through this iterative process that is really very
11 difficult and cumbersome to administer, and it
12 doesn't result in a substantially different answer.
13 So the consistent practice that's been applied has
14 been to use the budgeted data again with a check
15 after the fact to make sure there hasn't been a
16 material change.

17 **Q.** And how do you determine whether there has
18 been a material change? Is there a study performed
19 to determine that?

20 **A.** It's -- the financial group looks at
21 factors and the inputs into it and so, you know, as
22 long as the actual results are generally consistent

1 with the -- with the budgeted results, it can be --
2 it can go either way. The actual can be slightly
3 higher or slightly lower than the actual -- than
4 the forecasted inputs were. But unless a business
5 is added or, you know, sold off, something that
6 would substantially change the relative portion of
7 ComEd's size relative to the other companies in the
8 organization, unless something material happens.

9 Q. Thank you. That is all the questions I
10 have on the corporate governance charges. I'll
11 move on to the Exelon general services agreement.

12 In your surrebuttal testimony, it's
13 lines 264 to 267, which is Page 12, you state that
14 because the transactional costs have decreased from
15 85.4 million in 2001 to 84.3 million in 2004 that
16 there's no basis to conclude that the rates per
17 unit of measure are unreasonable; is that correct?

18 A. That is one reason to make that conclusion,
19 correct. I guess --

20 Q. Do you have any other bases to -- on which
21 to base the reasonableness of the rates per unit of
22 measure referenced here?

1 MR. THOMAS: I didn't quite hear that. Could
2 you repeat the question.

3 MS. SODERNA: Q Do you have any other bases
4 with which to conclude that the rates per unit of
5 measure are reasonable?

6 A. Well, I guess the factors that I've laid
7 out are that overall what -- look at the or the
8 testimony that I was addressing suggested that
9 there was an increase in the BSC costs and
10 therefore we need to examine whether or not the
11 rates are reasonable. And so, you know, there were
12 a number of factors that could be explained as to
13 why the BSC costs went up.

14 And with respect to the transactional
15 costs, which tend to be the rate times volume,
16 driven costs, those stayed the same. Other
17 elements of BSC costs increased because -- for the
18 reasons that I stated in my testimony -- because of
19 a change in the method that we used, that was used
20 to allocate the corporate governance costs and
21 because of the transfer of employees from ComEd to
22 BSC, those things tend to drive up the BSC costs.

1 **Q.** Going back to your conclusion about the
2 reasonableness of these rates, that conclusion is
3 not based upon a review of the rates charged within
4 Exelon to, say, for example, the rate charged in
5 the market for similar services; is that correct?

6 **MR. THOMAS:** Just for clarification, when you
7 say these rates, are you talking about the charges
8 by BSC to ComEd; is that what you mean by rates?

9 **MS. SODERNA:** Not the ultimate charges, but the
10 rate at which they're charged.

11 **Q.** For example, payroll -- processing of
12 payroll checks and the rate -- or legal fees, the
13 rate at which these services are -- the rates that
14 these services are charged at.

15 Have you done an analysis of the market
16 based price of those rates?

17 **A.** Have I personally --

18 **Q.** To compare them?

19 **A.** Have I personally done --

20 **Q.** Yes.

21 **A.** I have not personally done that analysis,
22 although I know that there are -- that there are

1 analyses done within the company to prepare --

2 Q. Have you reviewed any of those analyses?

3 A. I have seen them from time to time. I
4 didn't review -- directly review them prior to
5 responding to this.

6 Q. You didn't review those in preparation for
7 your testimony in this case?

8 A. Not recently, although I'm generally
9 familiar with their existence.

10 Q. Okay. But you yourself, you have not
11 researched market based rates for services like
12 those provided in the general services agreement,
13 right?

14 A. Did I -- I did not personally perform
15 research. As I mentioned, I'm aware that various
16 areas within the company have performed the type of
17 comparisons you're referring to.

18 Q. Moving on in your surrebuttal testimony,
19 it's the next page, lines 286 to 288.

20 You -- in referring to the negotiation
21 of the service level agreement, you state that it
22 is during this process that ComEd can compare the

1 rates for services to be received to the costs of
2 those services in prior years to determine the
3 reasonableness of the rates; is that accurate?

4 **A.** Correct.

5 **Q.** The implication here is that ratepayers
6 would be protected from overpaying for these
7 services because the company would look at the
8 trend in costs on an annual basis; is that fair?

9 **A.** I'm not sure what you say when you mean
10 ratepayers will be protected. What I'm suggesting
11 here is that ComEd is able on a year-to-year basis
12 to make an assessment as to whether the costs are
13 reasonable or not. One way it does that is through
14 analyzing changes in those costs to the prior year
15 and understanding the drivers of what causes those
16 changes.

17 **Q.** That's fair. Instead of characterizing it
18 as protection of ratepayers, looking at the general
19 reasonableness of the rate.

20 Is that a fair clarification of your
21 point?

22 **A.** I'm sorry, can you say that again.

1 **Q.** Rather than stating as I did earlier that
2 it's fair or reasonable to the ratepayer, you're
3 indicating that you're looking at the
4 reasonableness of the rate as it's compared to
5 prior years?

6 **MR. THOMAS:** Excuse me. I can't quite tell
7 whether that's a question or whether -- if it is,
8 it may have been asked and answered. If it's not,
9 can you just rephrase it because it's not clear to
10 me what the elements are that are now wrapped up in
11 that.

12 **MS. SODERNA:** Why don't I restate the question.

13 **Q.** I think it actually was answered, but just
14 to clarify maybe I'll just say it one more time so
15 it's clear on the record.

16 The comment that we just read into the
17 record from your surrebuttal testimony is that the
18 company reviews the trend in costs on an annual
19 basis at least in part to conclude as to the
20 reasonableness of the rates, the rates for these
21 services?

22 **A.** Right. There's an annual budget challenge

1 that is -- that virtually every department within
2 the company goes through where costs are -- for the
3 upcoming year are compared to cost levels for the
4 prior year and go through a pretty rigorous process
5 of challenging any changes in cost levels, and
6 there's always a big challenge to those costs as
7 well.

8 **Q.** What you just described, just kind of to go
9 back to what we were talking about before, this
10 process that you just described, would that involve
11 an analysis of the market based rate, or is that
12 analysis purely looking at the level of costs as
13 compared to prior years?

14 **A.** It could involve an analysis of a market
15 based rate or a benchmarking too. That's part of
16 the way that the BSC explains its costs levels to
17 the -- to ComEd. So it can be part of their
18 explanation as to their cost drivers.

19 **Q.** But as you sit here today, you can't
20 testify as to the fairness or reasonableness of,
21 for example, as I said earlier, the payroll
22 processing rate as compared to what is charged in

1 the market for a similar service; is that right?

2 MR. THOMAS: Excuse me. I don't believe that
3 the witness ever was asked or addressed in her
4 testimony the payroll processing rate. So I object
5 to the question, no foundation.

6 MS. SODERNA: Q Are you familiar with
7 Mr. McGarry's testimony on the issue of -- it was
8 an example cited in Mr. McGarry's testimony, the
9 payroll processing rate.

10 Are you familiar with that testimony?

11 A. I am. And I'm not personally familiar with
12 how that rate compares to a market rate, although I
13 know that that is something that the business
14 service company looks at from time to time so that,
15 you know, there is benchmarking done for various
16 practice areas to determine so they have an
17 understanding of how their costs stack up against a
18 market rate.

19 Q. Okay. I was just referring to
20 Mr. McGarry's testimony.

21 Are you familiar with his testimony with
22 regard to his proposal to conduct an audit of the

1 pricing terms of the general services agreement?

2 **A.** Yes.

3 **Q.** On Page 13 of your surrebuttal testimony,
4 lines -- same page we were on, lines 288 to 290,
5 you state that Mr. McGarry has provided no evidence
6 at that any of ComEd's rates are unreasonable and
7 his call for an audit in the absence of a good
8 reason should be disregarded.

9 Is that accurate?

10 **A.** That's correct.

11 **Q.** Do you know if any other witnesses
12 testifying on ComEd's behalf have provided
13 testimony or evidence as to the reasonableness of
14 the charges at issue here in this discussion in
15 comparison to market based rates for similar
16 services?

17 **A.** I believe that Mr. Costello has testified
18 to the reasonableness of ComEd's A and G costs, but
19 I don't know that he's presented testimony
20 specifically comparing those costs to market rates.
21 I think --

22 **Q.** You were the witness primarily responsible

1 for addressing the issue of the reasonableness of
2 the Exelon general services agreement; is that
3 right?

4 **A.** Well, I addressed the reasonableness of
5 ComEd's overall BSC costs and why I don't believe
6 an audit is necessary.

7 **Q.** Is it fair -- I'm sorry, did you want to
8 finish?

9 **A.** I think that it was Mr. Costello's
10 testimony also that compared A and G -- ComEd's A
11 and G costs and most of -- a high percentage of the
12 BSC costs are included in A and G. And he showed
13 some benchmarking of ComEd's A and G costs relative
14 to distribution costs relative to --

15 **Q.** But that wasn't specifically with regard to
16 the Exelon general services agreement; that was the
17 account of A and G overall --

18 **A.** It was A and G in which BSC is a large
19 part.

20 **Q.** Is it fair to say then that you believe it
21 is unreasonable for the Commission to independently
22 verify that these services -- the services under

1 the agreement are being provided at a fair and
2 reasonable price?

3 **A.** I don't -- I think what I'm objecting to is
4 the call for an audit without any basis to conclude
5 that they are unreasonable. ComEd has included
6 costs related to services provided by business
7 services company in its cost structure for a long
8 time. They're not new services to ComEd and --

9 **Q.** Okay. Sorry. Did you have anything else
10 to say?

11 **A.** Well, the suggestion that there should be
12 an audit was suggested because there was perceived
13 to be an overall increase in BSC costs. So the
14 implication was that BSC costs went up so therefore
15 we ought to look at whether the rates are
16 unreasonable. But we can explain why the BSC costs
17 went up and it really -- it was for reasons
18 unrelated to rates. It was for the reasons I
19 previously explained.

20 **Q.** You believe the costs are reasonable and
21 therefore shouldn't be investigated?

22 **A.** That's correct.

1 **Q.** I'm going to move on to the affiliate
2 allocation disallowance issue. This is your
3 surrebuttal, the earlier page, Page 12, lines 262
4 to 264.

5 You testify that the 119.7 million
6 combined increase in the corporate charges and
7 energy delivery shared services, or EDSS, of that
8 approximately 120 million, 13 million of that was
9 attributable to the sale of enterprises; is that
10 correct?

11 **A.** That's correct.

12 **Q.** And this \$13 million increase is not
13 attributable to an increase in the level of
14 corporate governance services provided to ComEd; is
15 that right?

16 **A.** Corporate governance services are not a
17 volume driven service, so I guess I'm...

18 **Q.** Maybe I can help you out.

19 There was no -- there was no direct
20 correlation between the \$13 million increase in --
21 as it applied to ComEd and the level of services
22 provided to ComEd; is that right?

1 MR. THOMAS: Excuse me, could you repeat that
2 question.

3 MS. SODERNA: Q There's no direct connection
4 between the \$13 million increase that we just
5 described and the level of corporate governance
6 services provided to ComEd; is that right?

7 **A.** Well, it was a result of the change in the
8 allocation factor that was used to allocate
9 corporate governance cost. Corporate governance
10 costs are not -- again, not a volume driven cost.
11 They tend to be fixed across --

12 **Q.** But the sole driver of the -- the \$13
13 million increase, this additional cost is the fact
14 that Exelon sold off its enterprise business and
15 then reallocated the corporate charges among the
16 existing affiliates which caused more costs then to
17 go to each affiliate; is that fair?

18 **A.** I don't know about reallocated. I don't
19 know that I would agree with that.

20 **Q.** What term would you use?

21 **A.** But the fact that enterprises was not there
22 to absorb the portion of the allocation in 2004, it

1 wasn't there so, there wasn't a reallocation to be
2 made. It was allocated a portion of the costs in
3 2003, but it was sold off and therefore not able to
4 be --

5 Q. So then just for sake of example, where if
6 enterprise was one of five affiliates when it got
7 sold off, there's now only four affiliates of which
8 to spread around the costs of the corporate
9 governance services; is that right?

10 A. That's right.

11 Q. Is that a fair example?

12 A. Right, uh-huh.

13 MS. SODERNA: I think that's all I have. Thank
14 you.

15 CROSS-EXAMINATION

16 BY

17 MR. NEILAN:

18 Q. Good afternoon. Just for the record, I'll
19 enter my appearance just in case it has not been
20 entered earlier this morning. My name Paul Neilan,
21 N-e-i-l-a-n, with the law firm Giordano and Neilan,
22 360 North Michigan Avenue, Chicago, Illinois.

1 Good afternoon, Ms. Houtsma.

2 **A.** Good afternoon.

3 MR. THOMAS: Mr. Neilan, if I could just ask you
4 to identify what party you are representing.

5 MR. NEILAN: Yes, I will in just a moment. I
6 was about to do that. I'm here with Giordano and
7 Neilan, and we're representing the Building Owners
8 and Managers Association of Chicago in this
9 proceeding.

10 **Q.** The questions that I have for you today
11 relate to the issue of the pension asset and
12 pension liability.

13 Is it correct that Exelon made a capital
14 contribution of \$803 million to ComEd in 2005?

15 **A.** Yes, it is.

16 **Q.** And Exelon's capital contribution to ComEd
17 was voluntary; is that correct?

18 **A.** Yes.

19 **Q.** Is it correct that the purpose of this \$803
20 million contribution was to permit ComEd to fully
21 fund an unfunded pension obligation?

22 **A.** That's what the funds were used for, yes,

1 to fund the pension obligation.

2 Q. Do you agree that if an employer has an
3 unfunded pension obligation that employer has a
4 liability?

5 A. Yes, ultimately the employer has a
6 liability to fund its pension.

7 Q. After ComEd -- excuse me. After Exelon
8 made the \$803 million capital contribution to ComEd
9 to fully fund that unfunded pension obligation, was
10 that \$803 million so used, in fact?

11 A. Yes, the \$803 million was used to fund
12 ComEd's pension obligation.

13 Q. Is it correct that you state that ComEd's
14 claimed pension asset is the result of the
15 contribution to the pension fund in excess of
16 amounts previously recognized in annual pension
17 expense?

18 MR. THOMAS: Could you direct us to exactly
19 where --

20 MR. NEILAN: Sure.

21 Q. If you refer to your surrebuttal testimony,
22 Exhibit 35.0, Page 24, lines 532 to 33.

1 **A.** I'm sorry, what were the line numbers?

2 **Q.** Page 24, lines 532 to 533.

3 **A.** I don't believe I used the word claimed

4 pension asset, but --

5 **Q.** Well, you --

6 **A.** I'd read the sentence. It says --

7 **Q.** It's the --

8 **A.** -- the pension asset is not merely a

9 product of accounting. It is the result of the

10 contribution to the fund amounts in excess of

11 amounts previously recognized in the annual pension

12 expense.

13 **Q.** Those amounts previously recognized in the

14 annual pension expense, that's what you mean by

15 pension obligation, what has to be funded?

16 **A.** No. It's not limited. Pension expense is

17 what has previously been recognized as expense on

18 ComEd's books, but it is not the totality of its

19 pension obligation. There's a portion of the

20 pension obligation that has not yet been reflected

21 in expense.

22 **Q.** So let me get this straight now. The

1 contribution of the funds of amounts in excess of
2 amounts previously recognized in annual pension
3 expense, are those amounts in total the pension
4 obligation that's unfunded, the unfunded pension
5 obligation?

6 I'm just trying to get what you mean by
7 this sentence.

8 **A.** Yes, the amount that has previously been
9 recognized in expense as well as the amount of the
10 pension asset are ComEd's total pension obligation
11 as of the time the contribution was made.

12 **Q.** Do you agree that the funding status of
13 ComEd's pension obligation then refers to that
14 difference, the difference between the pension plan
15 assets and estimated obligations of the plan?

16 **A.** I'm sorry, can you repeat that. I'm not
17 sure -- pension plan assets is a different term
18 than pension assets.

19 **Q.** Do you agree that the funding status of
20 ComEd's pension obligation refers to the difference
21 between plan assets and estimated obligations of
22 the plan?

1 **A.** There are a number of ways that you can
2 measure that; but generally, yes, the difference
3 between the assets that are in the fund and the
4 ultimate obligation is going to give you the
5 funding status, an indication of the funding
6 status.

7 **Q.** So when the \$803 million was used to fully
8 fund ComEd's pension obligation, that pension
9 obligation was discharged; is that correct?

10 **A.** No, I would not say it's been discharged.
11 It's an indication that the assets are equivalent
12 to the obligation, but it doesn't make the
13 obligation go away. It just indicates the funds --

14 **Q.** Okay. Let's go back.

15 When you fully fund -- we agreed just a
16 moment ago that the funding status is the
17 difference between plan assets and estimated
18 obligations of the plan. So if you fully fund the
19 plan with \$803 million that -- choose another word
20 than discharge -- satisfies or eliminates that
21 obligation? In fact I believe that was a word used
22 by one of the other ComEd witnesses.

1 MR. THOMAS: Are you asking for a legal
2 judgment? This witness does not address that.

3 MR. NEILAN: No. Your witness discusses
4 contributions to the funds and the pension
5 obligation and the pension assets. My questions
6 are directly related to that.

7 MR. THOMAS: I do object because I don't think
8 it is. I think what's happening is you're using
9 terms in a different way. When you talk about
10 discharging obligations, that is a legal judgment.
11 It is not an accounting issue. What is being
12 addressed here is accounting, so I do object to
13 that.

14 JUDGE DOLAN: Rephrase the question.

15 MR. NEILAN: Just a moment.

16 **Q.** Do you agree then that the \$803 million
17 contribution to the plan balanced that pension
18 obligation as it was fully funded after that
19 contribution?

20 **A.** Yes, I think that's fair. The
21 obligation -- the funding is equivalent to the
22 obligation.

1 **Q.** So once that \$803 million is applied or
2 balanced with the pension obligation, it's not
3 available to be used again in some accounting
4 sense; is that correct?

5 **A.** My understanding is that once funds are
6 contributed into the pension plan, they can only be
7 used to make pension plan payments. They can't be
8 used for other purposes.

9 **Q.** So the answer is yes?

10 MR. THOMAS: Excuse me. He's arguing with the
11 witness. The witness gave a responsive answer.

12 MR. NEILAN: I need to find out whether that's
13 yes or no.

14 MR. THOMAS: That assumes the question can be
15 answered with a yes or no.

16 MR. NEILAN: I'll ask it again. I think it's
17 pretty straightforward.

18 **Q.** So once the \$803 million was applied to
19 balance the pension plan obligation, it was not
20 available to be used again, correct?

21 **A.** Correct.

22 MR. THOMAS: Again for what?

1 MR. NEILAN: For any other purpose. Whatever
2 purpose ComEd may have, I don't know.

3 THE WITNESS: And that's correct. Once it was
4 contributed to the fund, it cannot be used for any
5 other purposes.

6 MR. NEILAN: Q So isn't it correct then that
7 this \$803 million is not on -- should not be
8 sitting on the books of ComEd as a separate pension
9 plan asset because it's already been applied to
10 that pension obligation?

11 **A.** No, that is not correct. That -- the
12 reference before to it can't be used for any other
13 purpose is a reference to the cash. ComEd cannot
14 take that cash and use it for something other than
15 payment -- for payment of pension obligations, but
16 that in no way implies that it should not be
17 reflected on ComEd's books as an asset. The
18 accounting for it as an asset is entirely correct.

19 **Q.** We previously -- you previously stated that
20 the pension plan was fully funded, which meant that
21 all the obligation was balanced with the \$803
22 million; we've said that already?

1 **A.** That's correct.

2 **Q.** So the \$803 million then is committed to

3 that obligation?

4 **A.** That's correct.

5 **Q.** And, in fact, the obligation to which it's

6 committed is that existing pension expense, not

7 some future unrecognized pension expense?

8 **A.** No, that -- I did not agree with that.

9 That's not correct. There is -- there is a portion

10 of the obligation that the 800 million is going to

11 be used to satisfy relates to amounts that have not

12 yet been recognized in ComEd's pension expense, but

13 it's been identified and been calculated as an

14 unrecognized pension obligation.

15 **Q.** However, earlier you said that the \$803

16 million was used to fully fund the unfunded pension

17 obligation?

18 **MR. THOMAS:** I'm going to object. You're now

19 arguing with the witness. I think the --

20 **MR. NEILAN:** I disagree. I'm trying to clarify

21 an answer, Counsel.

22 **MR. THOMAS:** Why don't you ask a clarifying

1 question rather than repeating a question you've
2 asked before and simply arguing with the witness as
3 to the answer.

4 MR. NEILAN: With all due respect to learned
5 counsel for ComEd, I think the witnesses answers
6 are inconsistent, and the reason I do is because
7 she has said the pension fund obligation was
8 unfunded. They fully funded it. They eliminated
9 the obligation. And now she still has the asset on
10 the books to apply elsewhere.

11 JUDGE HALOULOS: Overruled.

12 THE WITNESS: If I might just correct, I don't
13 believe that I said that I -- that the obligation
14 was eliminated.

15 MR. NEILAN: Q Balanced?

16 A. The obligation was balanced, but that is
17 considering amounts that have not been
18 unrecognized -- that have not been recognized on
19 ComEd's balance sheet as of this point in time.
20 But they are calculatable by an actuary and they're
21 identifiable. They've just not yet been recognized
22 on ComEd's balance sheet. I can explain

1 specifically what they are.

2 **Q.** Would it be correct to say that those are
3 actuarially determined present value of what those
4 pension benefits would be to employees in the
5 future; is that a fair summation?

6 **A.** No. It relates to unrecognized losses that
7 the trust fund assets have incurred. You know,
8 built into the actuarial calculations are estimates
9 of how much pension fund assets are going to earn
10 at any point in time.

11 And due to the overall stock market
12 performance in the early 2000 -- you know, the
13 first few years of 2000, 2003, the stock market
14 under performed what was expected. So there's some
15 what they call actuarial losses, and those
16 actuarial losses can be quantified in order to be
17 satisfied but they will not be recognized on
18 ComEd's balance sheet until they're smoothed in
19 over a period of time. So they haven't yet been --
20 it relates to unrecognized market losses from prior
21 periods that will be reflected in the pension
22 expense in the future.

1 **Q.** In addition to those obligations, you would
2 also have some calculation of future pension
3 benefits to employees; is that correct? Somehow
4 that figures into what your pension obligation is?

5 **A.** Well, that exists, yes. It's not part of
6 the unrecognized.

7 **Q.** No. I mean -- I'm talking about the
8 overall pension obligation.

9 **MR. THOMAS:** Your question is?

10 **MR. NEILAN:** Q Does the pension obligation
11 includes such things as future benefits to be paid
12 to employees?

13 **MR. THOMAS:** In addition to what she just said?

14 **MR. NEILAN:** Yes, in addition to -- she was
15 referring to market losses and plan assets.

16 **THE WITNESS:** Yes, pension expense generally
17 accrues over the working life of an employee pro
18 rata portion of their future pension payments. So
19 the obligation that has been funded so far reflects
20 what any given employee has earned to date and will
21 be paid in the future. It doesn't reflect any
22 amounts related to services they're going to

1 perform in the future. That's accrued over time.

2 MR. NEILAN: Q Do you agree that the value of
3 the assets contributed to a plan must be shown net
4 with the liabilities for pensions recognized as net
5 pension costs for past periods?

6 A. Can you repeat that one more time.

7 Q. Sure will.

8 Can you agree that the value of assets
9 contributed to a plan must be shown net of the
10 liabilities for pensions recognized as net pension
11 cost of past periods?

12 MR. THOMAS: Just for clarification, are you
13 asking her as an accounting matter or are you
14 asking her as an ERISA matter? What is the legal
15 obligation you're using?

16 MR. NEILAN: I did not mention ERISA.

17 MR. THOMAS: I just want to be clear because the
18 witness is an accounting witness. She is not here
19 as a legal witness. As long as you're directing it
20 only to accounting questions, I have no objection.

21 MR. NEILAN: I believe it's an accounting
22 question.

1 **Q.** In terms of presentation, you could say
2 should the presentation be net of liabilities for
3 pensions recognized as net of pension cost of past
4 periods?

5 **A.** No, I don't believe it is as you stated.
6 It's not -- trust fund assets are not shown on the
7 balance sheet of the company, if that's what you're
8 suggesting.

9 **Q.** Let's refine the question then.
10 Presentation with respect to the plan.

11 **A.** So --

12 MR. THOMAS: Are you talking about -- just
13 again, I'm really not trying to cause a problem.
14 Are you talking about the presentation on ComEd's
15 books, is that what we're talking about?

16 MR. NEILAN: Q The \$803 million is being
17 presented on ComEd's books as pension asset; is
18 that correct?

19 **A.** ComEd's -- what is shown on ComEd's balance
20 sheet is the accounting result that's calculated as
21 required by FAS87. I don't know that it's as
22 simple as saying that it's the pension expense net

1 of trust fund assets. So that's how I'm
2 understanding your question, and that's not a
3 correct characterization.

4 **Q.** Perhaps I didn't clarify it.

5 I'd like to introduce BOMA Cross Exhibit
6 4, and this is statement of financial accounting
7 standards No. 87 excerpts, and there are four pages
8 that are excerpted. This is an excerpt from FAS87
9 available on the web site of the Financial
10 Accounting Standards Board.

11 If I may refer the witness to Page 5
12 under the bold headed caption fundamentals of
13 pension accounting, the fourth paragraph. I wonder
14 if I could trouble you just to perhaps read that
15 sentence.

16 **A.** The paragraph --

17 **Q.** Beginning the --

18 **A.** The offsetting feature means that
19 recognized values of assets contributed to a plan
20 and liabilities for pensions recognized as net
21 pension cost for past periods are shown net in the
22 employer's statement of financial position. Even

1 though the liability has not been settled, the
2 assets may still be -- may be still largely
3 controlled and substantial risks and rewards
4 associated with both of those amounts are clearly
5 borne by the employer.

6 **Q.** Thank you.

7 If I could restate the question I asked
8 a moment earlier, do you agree that the value of
9 the assets contributed to a plan must be shown net
10 of the liabilities for pensions recognized as net
11 pension cost of past periods?

12 **A.** Yes.

13 (Whereupon, there was a
14 change of reporter.)

15

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1 (Change of reporters.)

2 BY MR. NEILAN:

3 Q. With the \$803 million pension asset, is the
4 pension fund now overfunded?

5 A. No.

6 Q. It's not overfunded?

7 A. No.

8 And if I might clarify, I think the --
9 and that's because of the unrecognized cost that I
10 was describing earlier, those are what are
11 described in Paragraph B, in the paragraph that
12 follows the one that I just read.

13 There is a immediate recognition of a
14 liability when the accumulated benefit obligation
15 exceeds the fair value of the plan and assets. In
16 this case, that obligation is that minimum
17 liability is recorded on Exelon's books. Exelon is
18 the planned sponsor. ComEd is a participant in the
19 Exelon pension plan and that liability is recorded.
20 Right now up at Exelon, it has not been reflected
21 on ComEd's books yet, but it is attributable to
22 ComEd employees.

1 **Q.** But they --?

2 **A.** The recognition hasn't occurred on ComEd's
3 books. It's been Exelon's compliance sponsors.

4 **Q.** So if I understand you correctly, ComEd has
5 not recognized those labilities but they do
6 recognize this \$803 million asset; is that correct?

7 **A.** Correct.

8 **Q.** Okay.

9 **A.** The cost at Exelon will be attributable to
10 the fact that -- as related to ComEd employees and
11 they have been funded by ComEd.

12 MR. NEILAN: No further questions, your Honor.

13 JUDGE DOLAN: Are you going ask for that
14 document to be admitted?

15 MR. NEILAN: Yes. I asked for admission for
16 that Cross Exhibit 4.

17 JUDGE DOLAN: Okay.

18 MR. THOMAS: No objection.

19 JUDGE DOLAN: Cross Exhibit No. 4 will be
20 admitted into evidence.

21

22

1 (Whereupon, Cross
2 Exhibit No. 4 was admitted
3 into evidence.)
4 MR. FOSCO: Staff is ready to go. I don't know
5 if staff needs a break.
6 MR. FOSCO: Actually, ICC would like to go.
7 MR. JOLLY: I have got two questions.
8 JUDGE DOLAN: Yeah. Mr. Jolly's is only 15
9 minutes.
10 (Whereupon, a discussion
11 was had off the record.)
12 CROSS-EXAMINATION
13 BY
14 MR. JOLLY:
15 Q. Hello, Ms. Houtsma. My name is Ronald
16 Jolly. I'm an attorney with the City of Chicago.
17 A. Good afternoon.
18 Q. I had some questions along the lines of
19 Ms. Sederna and in light of what she asked you
20 earlier. A few other questions.
21 In response to one of Ms. Sederna's
22 question, as I understood your testimony, you

1 stated that ComEd reviews the cost under the
2 general services agreements -- under the general
3 services agreement to ensure that the cost are
4 reasonable; is that correct.

5 A. That is correct.

6 Q. Assuming that the Commission accepts your
7 request for general service agreement costs in this
8 case and the -- in a later year ComEd determines
9 that those costs aren't reasonable, is it true that
10 ratepayers will not recognize the reduction of cost
11 allocated under the GSA?

12 MR. THOMAS: Excuse me, Mr. Jolly. We're
13 talking about the question -- I don't understand
14 the circumstance under this recognized to be
15 unreasonable. Is there some subsequent Commission
16 proceeding, or how is that happening.

17 MR. JOLLY: As part of the annual review that
18 Ms. Houtsma testified about.

19 MR. THOMAS: Okay.

20 BY MR. JOLLY:

21 Q. As part of that process, if ComEd
22 determines that the cost under the GSA are

1 unreasonable, is it true that ratepayers will not
2 realize that the costs are the lower costs
3 allocated under the GSA until ComEd files another
4 rate case?

5 **A.** I think any changes in BSC costs that incur
6 subsequent to the test year would be just like any
7 other change in ComEd cost levels, and those
8 changes would be recognized in the next rate case.

9 **Q.** But until the next rate case, the costs
10 that are -- the cost of the GSA that are included
11 in rates will remain the same?

12 **A.** Yes.

13 MR. JOLLY: Okay. That's all I have.

14 CROSS-EXAMINATION

15 BY

16 MR. REDDICK:

17 **Q.** Ms. Houtsma, my name is Conrad Reddick.
18 I'm representing the Illinois Industrial Energy
19 Consumers here today, and I'd like to you to turn
20 your attention to a different topic and see if we
21 can make me understand Goodwill.

22 **A.** All right.

1 **Q.** The test year balance for ComEd does
2 include Goodwill asset; doesn't it?

3 **A.** No.

4 **Q.** It does not?

5 **A.** No.

6 ComEd has not included any Goodwill on
7 the either rate base or common equity.

8 **Q.** You're right. I misspoke.

9 On the books of ComEd during the test
10 year there was a Goodwill asset.

11 **A.** Yes. In 2004.

12 **Q.** 2004.

13 And -- I'm sorry. I didn't you.

14 **A.** ComEd's balance sheet in 2004 reflects a
15 Goodwill asset.

16 **Q.** Excellent. Thank you.

17 And is that the Goodwill that was
18 recorded in connection with the merger back in
19 2000.

20 **A.** Yes.

21 **Q.** The ComEd-PECO merger.

22 Yes.

1 **A.** Yes.

2 **Q.** And at the same time --?

3 **A.** Well, I'm sorry. It was UNICOM-PECO.

4 **Q.** UNICOM-PECO.

5 **A.** Okay.

6 **Q.** And at the same time that Goodwill was

7 recorded, did ComEd also record a corresponding

8 increase in its equity?

9 **A.** There was an increase in equity as I think

10 I've stated in my testimony of the overall increase

11 in equity recorded at the time with the merger,

12 accounting was applied. It was something less than

13 the amount of the Goodwill.

14 So there was a series of -- purchase

15 accounting involves a fair value of assets.

16 **Q.** Okay. Well, let's go there.

17 The accounting for the October 2000

18 merger transaction has been described as taking

19 place in two parts, in accounting for a revaluation

20 of assets and liabilities; and, second, accounting

21 for the excess of the purchase price book value.

22 Is that an accurate description of what happened.

1 **A.** Those are two steps that are involved in
2 the application purchase accounting, yes.

3 **Q.** Okay. So let's look at the first part of
4 this, the revaluation. And I think this is what
5 you were talking about before.

6 When ComEd's assets were revalued, the
7 reduction in the values of those assets related to
8 the Generation plants; didn't it.

9 **A.** In part.

10 **Q.** How big a part?

11 **A.** Well, I don't have the -- there was net
12 reduction in asset -- net assets of \$2.6 billion.
13 I would say a significant portion of that related
14 to the nuclear assets. There was a -- it wasn't
15 100 percent related to nuclear assets. . .

16 **Q.** What's that?

17 I'm sorry, I'm having trouble hearing
18 you.

19 **A.** The \$2.6 billion was the net reduction in
20 net assets related to the fair value write-down,
21 and a significant portion of that did relate to the
22 nuclear asset, although, not 100 percent.

1 Something less than 100 percent related to the
2 nuclear asset.

3 **Q.** Can you approximate how much?

4 **A.** I said "significant," so I guess I
5 wouldn't want to give a number off the top of my
6 head.

7 **Q.** What -- do you know what the total
8 reduction in assets was, not the net, but the
9 accounts, the asset accounts? What was the
10 reduction?

11 **A.** 4.79 billion.

12 **Q.** And the write-down of the nuclear plants
13 was approximately how much?

14 **A.** That asset reduction was largely related to
15 the nuclear plant.

16 **Q.** How much in dollars?

17 MR. THOMAS: Asked and answered.

18 THE WITNESS: I believe that it was provided in
19 the data request response. I don't have it.

20 BY MR. REDDICK:

21 **Q.** Okay. Well, do you have Mr. Gorman's
22 testimony handy?

1 **A.** No.

2 **Q.** In his testimony, he quotes an SEC filing
3 by the company that says that the plants were
4 determined to be worth \$4.7 billion less than the
5 book value. Does that sound right?

6 **A.** That's -- I don't have any -- if he's
7 quoting that from the SEC document, I don't dispute
8 it.

9 **Q.** Okay. Now, does ComEd still own the
10 non-distribution assets that were written down as
11 part of that merger for revaluation?

12 **A.** Well, again, to be clear, there were assets
13 that were written down and there were liabilities
14 that were written up. The -- ComEd does not only
15 plant asset -- the nuclear plant as that were
16 written down --.

17 **Q.** Let's focus on the assets.

18 **A.** Okay.

19 **Q.** They do not own the assets that were
20 written down?

21 **A.** No.

22 **Q.** Putting aside for the moment the

1 liabilities that were written up, were there other
2 non-generation assets that were written down?

3 **A.** I believe there were some related to other
4 unregulated businesses.

5 **Q.** Were any of the distribution assets of
6 ComEd written down?

7 **A.** No.

8 **Q.** Were any of the Illinois jurisdictional
9 transmission assets of ComEd written down?

10 **A.** No.

11 **Q.** So the depreciative of the original cost of
12 the distribution assets recorded on ComEd's books
13 at the time of merger did not change as a result of
14 the merger accounting?

15 **A.** No, the distribution assets did not.

16 **Q.** Okay. Now turn to the -- let's turn to the
17 second part of the process that's accounting for
18 the purchase premium.

19 The -- well, do you recall the purchase
20 price excess over the book value? Do you know what
21 that number was.

22 **A.** It was an approximated 2.292 million. That

1 was the excess of the purchase price over the book
2 value of ComEd's assets --.

3 Q. Okay.

4 A. -- prior to the write-down.

5 Q. Prior to the write-down?

6 A. Yes.

7 Q. And what happened as a result of the
8 write-down?

9 A. As a result of the write-down, the book
10 value of the assets went -- was lower.

11 Q. And what -- I'm sorry. Finish.

12 A. Well, I'll try to go back to what your
13 question was. And I think -- but that doesn't --
14 the premium is -- when we talk about a premium, the
15 premium is typically measured off of the
16 prewrite-down of the existing historical.

17 Q. Was it in this case?

18 A. I guess if you would define what you mean
19 by "premium" .

20 Q. The excess of the purchase price of the
21 book value of the assets.

22 A. The excess of the purchase price over the

1 book value of the assets was the \$2.29 billion.

2 Q. So the write-down of assets took place
3 after the Goodwill was calculated?

4 A. The write-down and -- they were calculated
5 simultaneously.

6 So the Goodwill is the difference
7 between the fair value --.

8 Q. I'm having trouble wrapping my head around
9 that one.

10 A. Goodwill is the difference between the fair
11 value of the assets and the purchase price.

12 Q. Okay.

13 A. The premium is typically referred to as the
14 difference between the book value of the assets and
15 the purchase price.

16 Q. You clarified it beautifully. I should be
17 saying "Goodwill," not "premium." Because that's
18 what I want to talk about.

19 Okay. So the Goodwill then is the
20 excess of the purchase price over the asset value
21 after the write-down.

22 A. That's correct.

1 **Q.** Okay. And do you recall how much that was?

2 **A.** That was \$4.9 billion.

3 **Q.** Great. We're getting the numbers I've got

4 written down here. That's good.

5 And when that Goodwill was calculated

6 and recorded, was there accounting activity in the

7 equity account.

8 **A.** Well, there was a -- the end result of the

9 application of purchase accounting is to -- yes,

10 does reflect -- does effect the application.

11 **Q.** By the same 4.9 billion?

12 **A.** No. Increased equity by 2.292 million

13 because it's the net of the reduction that occurs

14 from the fair value and then the increase that

15 occurs from Goodwill.

16 **Q.** Okay. Now when that second part of the

17 process took place, were the distribution assets

18 accounts effected by that when we recorded

19 Goodwill?

20 **A.** When you say were the distribution assets

21 effected by that, do you mean plant assets?

22 **Q.** Yes.

1 **A.** Well, it's recorded on ComEd the
2 distribution company. It's related to ComEd. It's
3 recorded on ComEd's books. It hasn't been
4 functionalized for purposes of this proceeding as a
5 distribution asset.

6 **Q.** Well, Goodwill isn't a distribution asset;
7 is it?

8 **A.** Not -- for purposes of setting rates, we've
9 not included it as a distribution asset, but it
10 relates to the distribution business and that's why
11 it's on ComEd's book. It's determined it should be
12 on ComEd's books.

13 **Q.** Well, let me read you -- again, quoting
14 from Mr. Gorman's testimony. Him quoting the SEC
15 document, the same one.

16 He says, Under Generally Accepted
17 Accounting Principles, Goodwill is the unidentified
18 intangible value of an acquired business and as
19 such cannot be ascribed to particular assets.

20 Do you disagree with that?

21 **MR. THOMAS:** I'm sorry, could you show the
22 witness at least Mr. Gorman's testimony so we can

1 be sure we're getting a quote and then we may have
2 to accept it subject to check.

3 MR. REDDICK: Read this sentence.

4 MR. THOMAS: I can't read that far.

5 I don't see the quote here.

6 THE WITNESS: The testimony, he's quoting
7 from -- he's reading from something.

8 MR. REDDICK: Yes, the August 22nd -- here.

9 Yes, he was quoting from the August 22nd
10 SEC filing, AK.

11 MR. THOMAS: This is a ComEd AK?

12 MR. REDDICK: Yes.

13 THE WITNESS: So I think the quote that you're
14 reading says that under Generally Accepted
15 Accounting Principles, Goodwill is the unidentified
16 intangible value of an acquired business and as
17 such cannot be ascribed to particular assets.

18 And I agree with that statement. It
19 can't be identified with any particular asset.
20 Although, it is -- can be identified with a
21 business. In this case, it was --.

22 Q. And the business -- by business, you mean

1 the corporation Commonwealth Edison?

2 **A.** Commonwealth Edison, yes, as a transmission
3 and distribution business.

4 **Q.** Right.

5 But are you suggesting that that
6 Goodwill asset actually supports ComEd's provision
7 of distribution services to customers.

8 **A.** I don't know that "support" is the right
9 word. It relates to and stems from the business
10 that ComEd is engaged in as a transmission and
11 distribution service provider.

12 **Q.** What besides being on the books of ComEd
13 Corporation does that mean?

14 **A.** It means that the merger purchase price
15 ascribes some value to sort of the ongoing
16 business, ComEd's standing as an ongoing business
17 concern.

18 It didn't, for example, attach value to
19 poles and wires that, you know, as an asset, that
20 would have -- that has greater value and carried on
21 ComEd's books but it recognizes that there's value.

22 **Q.** So we have this Goodwill asset on the books

1 of ComEd Corporation, but the recording of that
2 Goodwill asset did not change the balances in any
3 of the asset accounts?

4 **A.** Well, it is recorded in a plant asset
5 account on ComEd's books. That's where it's
6 required to be recorded under the FERC class of
7 accounts.

8 **Q.** But it's in its own account?

9 **A.** Yes. It's in an account practice. It's
10 specifically for acquisition adjustments.

11 **Q.** Right.

12 And the facilities, the plant accounts
13 that ComEd -- that represents the equipment ComEd
14 uses to provide service were not effected.

15 **A.** Outside of this account which it rolls up
16 on the balance sheet for FERC reporting purposes,
17 it rolls up into a plant account. That's as
18 ascribed. But the other accounts outside of this
19 ascribed account were not effected.

20 **Q.** Okay. You said it better than I could.

21 Now the next sentence, if we can stay
22 with that quotation from the SEC for a moment more.

1 The next sentence says, Since the
2 Goodwill arose out of the merger transaction and
3 did not relate to the generating stations, no
4 Goodwill was transferred to Exelon Generation when
5 the plants were transferred sometime later.

6 Do you see that.

7 **A.** Yes.

8 **Q.** Okay. Now is that an accurate description
9 of how the accounting works with Goodwill and the
10 transfer of the plants?

11 **A.** Well, that's factual. There was no
12 Goodwill transfer to the Generation Company and
13 subsequent transaction.

14 **Q.** And do you disagree that the same sort of
15 reasoning means that Goodwill can't be attributed
16 to particular distribution assets?

17 **A.** I'm sorry, can you repeat that. I'm not
18 following the question.

19 **Q.** Just as Goodwill arose out of the merger
20 and could not be ascribed to or attributed to
21 generated assets, the nature of Goodwill is such
22 that it can't be attributed to or ascribed to

1 distribution assets?

2 **A.** I guess I don't -- you know, what we
3 discussed previously was that the Goodwill could
4 not be ascribed to any particular assets. It was
5 ascribed to the ongoing -- to ComEd's --.

6 **Q.** The business of ComEd, the corporation?

7 **A.** Yes. And not to any particular assets.

8 **Q.** And one final question. When the plants
9 were transferred -- and I think it was January
10 2001.

11 **A.** Correct.

12 **Q.** Did I get that right?

13 **A.** Yes.

14 **Q.** When they were transferred in January of
15 2001, did the accounting associated with that
16 transfer of the generating plant effect any of the
17 distribution plant asset accounts?

18 **MR. THOMAS:** Objection. I think that's been
19 asked and answered now about five times, unless --.

20 **MR. REDDICK:** Well, I think this is the first
21 time we've talked about the accounting for the
22 transfer of the nuclear plants.

1 JUDGE DOLAN: I'm going to overrule it.

2 THE WITNESS: I just want to be sure I'm clear
3 on what you're asking when you say distribution
4 plant account, distribution accounts. If your
5 question is, was there any distribution plant
6 transferred to the generated company the answer is
7 no.

8 BY MR. REDDICK:

9 Q. No, that wasn't the question.

10 A. Okay.

11 Q. The question was whether the distribution
12 plant wasn't transferred and left behind and ComEd
13 was effected by the transfer.

14 MR. THOMAS: I'm going to renew my objection in
15 that it's been asked and answered.

16 JUDGE DOLAN: Well, the witness can answer.

17 THE WITNESS: You know, there were -- I think
18 again it goes to a definition of distribution.
19 There are specific distribution plant accounts.
20 Those were not effected.

21 There are generally intangible plant
22 accounts that are allocated to distribution in a

1 proceeding such as what we're in, and those were
2 effected because there was some general plant that
3 was transferred to the Generation Company as well
4 as to Business Services Company.

5 So they were effected. So the general
6 and tangible assets accounts were effected. But
7 distribution plant accounts per se were not.

8 BY MR. REDDICK:

9 **Q.** I think you said two things.

10 The accounts themselves were effected
11 because some general plant did get transferred.
12 And if I -- if we state what happened using the
13 same phrase that you did earlier in connection with
14 the merger transaction; that is, plant -- I'm not
15 sure how to use this for accountants. The actual
16 assets, distribution assets, other than the
17 Goodwill account asset and those things that were
18 transferred were not effected.

19 I'm trying to focus on the things that
20 were left behind.

21 **A.** Okay.

22 **Q.** So am I correct that aside from the

1 Goodwill plant account and the general plant assets
2 that were transferred, the things that were left
3 behind weren't effected by the transfer of the
4 nuclear assets?

5 **A.** Are you asking whether they were revalued
6 in any way?

7 **Q.** In any way, yes.

8 **A.** No.

9 **Q.** Okay. I apologize for using all the wrong
10 words, but thank you very much.

11 JUDGE DOLAN: Thank you.

12 JUDGE DOLAN: Mr. Fosco, not to put you under
13 the gun but we only have the court reporter till
14 6:30.

15 MR. FOSCO: I'll do my best, and I think we'll
16 be okay.

17 JUDGE DOLAN: Okay.

18 CROSS-EXAMINATION

19 BY

20 MR. FOSCO:

21 **Q.** Good afternoon, Ms. Houtsma. My name is
22 Carmen Fosco and I represent staff, and I have a

1 few questions for you.

2 **A.** Good afternoon.

3 **Q.** Why don't we start off kind of where
4 Mr. Reddick left off. How much did ComEd receive
5 in consideration for transferring its nuclear power
6 plants in 2001 as part of the corporate
7 restructuring?

8 **A.** Well, ComEd received, as I recall, about
9 \$1.3 billion of its own common stock and then
10 because my testimony states we also received a
11 \$1 billion note receivable at the time of that
12 transaction. A note receivable from Exelon
13 Corporation, from the parent company.

14 **Q.** Okay. So putting aside the note that you
15 just described, it's your testimony that ComEd
16 received 1.3 billion in consideration --?

17 **A.** Of its own common stock.

18 **Q.** And that is the consideration that was
19 received?

20 **A.** (Nodding head up and down).

21 **MR. FOSCO:** Your Honor, may I approach the
22 witness?

1 Your Honor, I'm going to hand the
2 witness excerpts from ComEd or ComEd and Exelon's
3 10-K filed April 1, 2002, for December of 2001.

4 (Whereupon, ICC Staff Cross
5 Exhibit No. 1 was marked
6 for identification.)

7 BY MR. FOSCO:

8 **Q.** Ms. Houtsma, do you recognize this document
9 as portions of the 10-K filed for Exelon and
10 Commonwealth Edison Company and PECO Energy for
11 2001?

12 **A.** Yes.

13 **Q.** Are you familiar with these pages?

14 **A.** Yes.

15 **Q.** If you refer to Page 98 of this document,
16 would you agree that it shows that ComEd received
17 consideration of 905 million rather than
18 1.3 billion?

19 **A.** Yes. The 900 is the net of the
20 \$1.3 billion of the treasury stock that was
21 received, and then ComEd also established a note
22 payable to the Generation Company for some

1 liabilities that were transferred as well.

2 Q. And you agree that the consideration is
3 actually the net of those two items rather than
4 just the value of the treasury stock?

5 A. I think that's fair.

6 Q. I'm sorry, I didn't hear that.

7 A. That's fair.

8 Q. I don't mean to repeat myself, but just so
9 we're clear, do you agree that the items shown on
10 Page 98 of ICC Staff Cross Exhibit 1 reflect the
11 form of the consideration that ComEd received,
12 meaning the treasury stock and the note that you
13 mentioned?

14 MR. THOMAS: And you're excluding the note
15 payable?

16 MR. FOSCO: Well, I'm including that. The
17 consideration was the net of those two items. That
18 was the form.

19 MR. THOMAS: Well, we're talking about two
20 different note payables.

21 MR. FOSCO: Oh, you're right. I'm excluding --
22 yes. I'm excluding the -- I think it's the

1 \$1 billion note that you mentioned.

2 MR. THOMAS: Right. Just so the record is clear
3 on that.

4 MR. FOSCO: Thank you.

5 BY MR. FOSCO:

6 Q. Can you answer that or do you need it
7 rephrased?

8 A. Can you repeat it.

9 Q. Okay. Excluding the \$1 billion note
10 receivable for Exelon that you discussed in your
11 testimony, would you agree that the consideration
12 that ComEd received for the transfer of its
13 Generation assets, the form of that consideration
14 is fully reflected on Page 98 of ICC Staff Cross
15 Exhibit 1?

16 I guess my question --.

17 MR. THOMAS: Can you repeat the question.
18 Sorry, Carmen.

19 BY MR. FOSCO:

20 Q. Page 98 refers to the treasury stock
21 received, other paid in capital, and notes
22 payable - affiliates; is that correct?

1 **A.** That's correct.

2 **Q.** Okay. What is -- can you identify what the
3 other paid in capital is?

4 **A.** I don't recall offhand what that 4 million
5 was.

6 **Q.** Fair enough.

7 And I know you described the notes
8 payable. Did you describe what those are and did
9 ComEd forgive a note payable to it or can you
10 describe again what that was.

11 **A.** No. This was a note payable from ComEd.
12 As I recall, it was to the Generation Company to --
13 there was some liabilities, some current
14 liabilities that were transferred to the Generation
15 Company. And as it related to activity that
16 performed prior to the date of transfer, ComEd
17 established a note payable to provide the cash
18 necessary to pay off those liabilities.

19 **Q.** So --?

20 MR. THOMAS: And, Carmen, again, just so we're
21 clear, you're talking about this notes payable.

22 MR. FOSCO: Affiliates, on Page 98.

1 MR. THOMAS: Because there were two notes
2 payable flying around here.

3 MR. FOSCO: We'll address other one in a minute.

4 BY MR. FOSCO:

5 Q. With that clarification; is that correct?

6 A. Yes. I was referring -- what I was
7 describing was the \$463 million note payable.

8 Q. So ComEd received treasury stock but then
9 at the same time issued a note payable to Ex-Gen or
10 Exelon; is that correct?

11 A. Yes.

12 Q. So that the net consideration including
13 treasury stock, other paid in capital, and the
14 \$463 million note was 905 million?

15 A. That's correct.

16 Q. Would you agree that ComEd received no
17 assets as part of this transaction? Physical
18 assets.

19 A. No physical assets? If by physical assets
20 we're talking about plant or something of that
21 nature, no.

22 Q. And ComEd received any cash?

1 **A.** Other than a note receivable, the billing
2 down note receivable was recorded at that point in
3 time and over time --.

4 **Q.** The treasury --?

5 **A.** -- converted into cash.

6 **Q.** I'm sorry. Are you finished?

7 **A.** Over time ComEd received cash for that note
8 receivable.

9 **Q.** The 1 billion --?

10 **A.** And --.

11 **Q.** The \$1 billion note?

12 **A.** Yes.

13 **Q.** The -- do you agree that the receipt of
14 treasury stock, that's not cash receipt for ComEd;
15 is that correct?

16 **A.** That's correct.

17 **Q.** Do you agree that the receipt of treasury
18 stock represents a reduction in ComEd's common
19 stock?

20 **A.** Yes.

21 **Q.** Did the reduction in common stock help
22 ComEd -- let me rephrase that. I'm sorry.

1 Did the reduction of common stock as a
2 result of this transaction help ComEd meet its
3 obligation to serve customers and other financial
4 institutions.

5 **A.** I'm not sure what specifically you mean by
6 did it help it meet its obligation.

7 **Q.** Well, you understand ComEd's business in
8 providing services to its customers; correct?

9 **A.** Yes.

10 **Q.** Did ComEd use the reduction in common stock
11 in any way to help it serve its customers, either
12 financially or in any other way?

13 **A.** Well, I think it was part of an overall
14 transaction that ComEd -- that as part of enabling
15 ComEd to meet its obligation to its customer, ComEd
16 entered into a power purchase agreement, for
17 example, as part of that transaction.

18 **Q.** Okay. But my question wasn't about the
19 power purchase agreement. But, specifically, if it
20 received treasury stock, it enabled it to do that,
21 specifically, you know, serve its customers?

22 **A.** Well, the retirement treasury stock is more

1 between ComEd and its parent company; so it reduces
2 ComEd's obligation to its parent company.

3 Q. Would you agree that after receipt of that
4 treasury stock ComEd -- or ComEd was still 99.9
5 percent owned by its parent company?

6 A. Yes.

7 Q. Was the treasury stock used in any way to
8 upgrade service to your knowledge?

9 A. I don't understand the question of how you
10 use treasury stock to upgrade service. ComEd
11 was -- has continually been investing in operating
12 service.

13 Q. I guess that's the point of my question.
14 Would you agree that there's no really specific way
15 to use treasury stock to upgrade service? It is
16 what it is. It's to receipt -- backup certain
17 outstanding stock.

18 A. Yes, I would agree that it is what it is.

19 Q. Was the treasury stock used in any way to
20 your knowledge to retire debt?

21 A. Treasury stock is not used to retire debt.

22 Q. On Page 18, Line 388 of your surrebuttal

1 testimony you refer to the \$1 billion note
2 receivable from Exelon Corporation; is that
3 correct?

4 **A.** I'm sorry, can you give me the page
5 reference.

6 **Q.** Sure. Page 18 at Line 388.

7 MR. THOMAS: Which testimony are you in?

8 MR. FOSCO: Surrebuttal.

9 MR. THOMAS: Thanks.

10 THE WITNESS: Yes.

11 BY MR. FOSCO:

12 **Q.** And is it your testimony that this note was
13 received as part of the consideration for the
14 restructuring?

15 **A.** It was part of the overall transaction. I
16 don't know that that was called out as the
17 consideration. It was part of the overall
18 transaction.

19 **Q.** Isn't it true that the \$1 billion note
20 receivable was for the purpose of funding future
21 tax payments resulting from collection of
22 intangible transition charges?

1 **A.** That was the basis for which it was
2 established, yes.

3 MR. FOSCO: Your Honor, I have one line of
4 questioning which I can eliminate if counsel would
5 potentially not object to entry of ComEd's response
6 to staff data request No. SK 4.01.

7 MR. THOMAS: Just show it to me.

8 MR. FOSCO: And, your Honor, for the record,
9 I've marked this as ICC Staff Cross Exhibit 2.

10 (Whereupon, ICC Staff Cross
11 Exhibit No. 2 was marked
12 for identification.)

13 MR. THOMAS: I have no problem.

14 MR. FOSCO: Your Honor, I would move for
15 admission of ICC Staff Cross Exhibit 2.

16 JUDGE DOLAN: No objection?

17 MR. THOMAS: No objection.

18 JUDGE DOLAN: Okay. ICC Staff Cross Exhibit
19 No. 2 would be admitted into evidence.

20 MR. FOSCO: Thank you.

21 JUDGE DOLAN: Are you admitting 1 into evidence?

22 MR. FOSCO: I'm sorry, did I misspeak?

1 JUDGE DOLAN: Well, no. You didn't mention 1.
2 I'm just asking. You're asking for 2 to go in.

3 MR. FOSCO: Yeah, I guess I could do it now. I
4 would move for admission of ICC Staff Cross
5 Exhibit 1 as well. I was going to wait until the
6 end.

7 MR. THOMAS: That is the --.

8 MR. FOSCO: The excerpts from the. . .

9 MR. THOMAS: 10-K?

10 MR. FOSCO: 10-K, yeah.

11 MR. THOMAS: We have no objection to the
12 admission of that.

13 JUDGE DOLAN: Okay. Just for the record, ICC
14 Cross Exhibit No. 1 will be admitted into evidence.
15 (Whereupon, ICC Staff Cross
16 Exhibit Nos. 1 and 2 were
17 admitted into evidence.)

18 BY MR. FOSCO:

19 Q. I have a few follow-up. Mr. Reddick
20 eliminated most, and actually the prior questions
21 from other counsel eliminated most of my
22 questions -- other questions about the merger and

1 the subsequent transfer pursuant to the
2 reorganization.

3 You testified that Goodwill is not
4 recorded as a distribution asset. And I believe
5 you stated but it was part of the business --
6 continued to be part of the business, ComEd's
7 business; is that correct.

8 **A.** Yes. Goodwill is an asset on ComEd's books
9 and ComEd is transmission of its distribution
10 service company, but it is not -- and it is
11 recorded in the plant accounts. The FERC class of
12 accounts requires it.

13 **Q.** And was it your testimony that it's not
14 included in the rate base ComEd's proposing in this
15 proceeding?

16 **A.** That is correct. I don't know if we talked
17 about that previously, but that is correct, we've
18 not looked at the rate base.

19 **Q.** But that account and that item is included
20 in ComEd's proposed capital structure; is that
21 correct?

22 **A.** No, that's not correct. It's not a

1 Goodwill capital structure. We excluded all of the
2 effects of purchase accounting. Goodwill is one
3 piece of purchase accounting.

4 Q. Okay. I'm just going to run one time
5 through this and try to clarify for myself --?

6 A. Okay.

7 Q. -- this issue.

8 You're familiar with Mr. Mitchell's
9 direct testimony; is that correct.

10 A. Yes.

11 Q. I'm sorry. I would say rebuttal. Or
12 actually, I take that back. I did mean his direct.

13 The adjustment that ComEd made is
14 depicted on Page 7 of Mr. Mitchell's direct
15 testimony, is that correct, the adjustment to
16 remove the impact of purchase accounting?

17 Is it -- I don't recall it being
18 separately stated in your testimony. Maybe it is.

19 MR. FOSCO: May I approach the witness, your
20 Honor?

21 JUDGE DOLAN: Yes.

22 THE WITNESS: What was your question?

1 BY MR. FOSCO:

2 Q. My question was, do you agree that the
3 entry shown on Page 7 of Mr. Mitchell's direct
4 testimony reflects the adjustment that ComEd made
5 to account for the effects of push-down accounting?

6 A. Yes.

7 Q. And you testified that -- well, let me ask
8 this question first: Those adjustments include the
9 Generation assets, right, at that point in time,
10 the entries resulting in ComEd's adjustment?
11 Include adjustments for --?

12 A. They included -- it included the effect on
13 equity of fair value write-downs to Generation
14 assets.

15 Q. Is it your position that if --
16 hypothetically, if ComEd still owned the Generation
17 assets that the adjustment that you proposed in
18 this case would be the same?

19 MR. THOMAS: I'm going to object. That calls
20 for speculation.

21 MR. FOSCO: Well, I think that's what the
22 witness said. Whether she can answer that -- I

1 mean, I don't -- also, I disagree. I think it's
2 fairly straightforward.

3 JUDGE DOLAN: I will overrule it for what it's
4 worth

5 BY MR. FOSCO:

6 Q. Can you answer the question?

7 MR. THOMAS: Would you repeat the question for
8 the record.

9 BY MR. FOSCO:

10 Q. Do you agree that the adjustment shown on
11 Page 7 of Mr. Mitchell's direct testimony would
12 also reverse the effects of push-down accounting if
13 ComEd hypothetically still owned the Generation
14 excess?

15 A. The effects of push-down accounting were
16 what they were at the time of the merger. So I'm
17 not clear if you're asking what we would reflect
18 if -- are you suggesting how would we treat it?

19 Q. Well, let me ask you this --?

20 A. -- if asset -- if the nuclear assets --.

21 Q. Let me ask you. I'll try to rephrase it.

22 Would you agree that all of these items

1 shown on Page 7 of Mr. Mitchell's direct testimony
2 reflect items that occurred before the corporate
3 restructure, the corporate restructuring where the
4 Generation assets were transferred.

5 **A.** Yes. This is what happened the day of the
6 merger, which was before the corporate restructure.

7 **Q.** And if I understand your testimony then,
8 the net impact on equity at that time was
9 2.292 billion; is that correct?

10 **A.** Yes.

11 **Q.** And the adjustments made to get to that
12 number included recording 4. -- well, 4.705 billion
13 in Goodwill; is that correct?

14 **A.** Yes.

15 And just -- I guess let me clarify. The
16 4.705 reflects some amortization of the Goodwill
17 that occurred.

18 **Q.** Thank you.

19 And then the second transaction that
20 occurred was the restructuring that resulted in the
21 transfer of the Generation assets; is that correct.

22 **A.** That's correct. That occurred -- that

1 transaction occurred after the merger.

2 Q. Let me back up. At the time of the merger
3 then, ComEd did have Goodwill on its books; is that
4 correct? Immediately after the merger.

5 A. Immediately after the merger, ComEd --.

6 Q. And ex- -- I'm sorry.

7 A. Immediately after the merger, ComEd had
8 Goodwill in its books, yes.

9 Q. Again, excluding the effects of
10 amortization, that amount was roughly 4.7 billion;
11 is that correct?

12 A. The amount of Goodwill?

13 Q. Right.

14 A. Yes.

15 Q. What happened with the corporate
16 restructuring that removed -- well, let me ask it
17 this way:

18 Did anything happen with corporate
19 restructuring to remove the 4.7 billion in
20 Goodwill.

21 A. No. The \$4.7 billion in Goodwill remains
22 on ComEd's books as an asset.

1 **Q.** So then aren't you -- I'm confused.
2 Doesn't that mean that Goodwill is reflected in
3 ComEd's corporate -- in ComEd's capital structure
4 submitted in this proceeding since it's on its
5 books?

6 **A.** Now we're confusing the assets side of the
7 balance sheet with the liability side of the
8 balance sheet or capital structure. The asset
9 remains on ComEd's books, but the effect on equity
10 of the merger accounting was the increase in equity
11 of 2.292 billion.

12 **Q.** I think it's also your testimony that the
13 corporate restructuring that resulted in the
14 transfer used the fair values rather than the
15 original cost values; is that correct?

16 **A.** Well, the asset transfer -- the assets were
17 transferred at their 1.101 values, which was a new
18 book value. They were required by GAAP to be
19 recorded at their book value, and their book value
20 at the time was based the -- was synonymous with
21 the fair value.

22 **Q.** And would you agree that that book value is

1 not the book value that would apply for rate paying
2 purposes, is that correct, because that was the
3 written down value rather than the original cost
4 value?

5 **A.** I don't believe we're requesting the
6 asset -- we're not requesting any of the book value
7 of the asset of the nuclear assets and rates in
8 this proceeding. There is no remaining value.

9 **Q.** I wasn't asking about what you were
10 proposing here, but trying to understand the
11 transaction that the values in which the assets
12 were transfer were the not the values that would
13 have applied in a ratemaking context; is that
14 correct?

15 **A.** It was not the value at which they had
16 historically been reflected in rates; that's
17 correct.

18 **Q.** Was any adjustment made at the time of
19 corporate restructuring to reflect the difference
20 between the historical values that had been
21 reflected in rates and the written down book values
22 at the time of the corporate restructuring?

1 **A.** I'm not sure what you mean by was any
2 adjustment made. They were transferred. As stated
3 earlier, they were -- GAAP required those be
4 transferred at their book value at the time that
5 they were transfer, and that was their fair value.

6 **Q.** But that's not the value that they were on
7 ComEd's book for ratemaking purposes; is that
8 correct?

9 **A.** That's correct.

10 **Q.** Okay.

11 **A.** We really had no -- you know, had no way or
12 no mechanism in which they could have been
13 transferred at that value.

14 **Q.** Well, there's nothing to prevent ComEd from
15 receiving additional consideration for the
16 transfer; is that correct?

17 I mean, it happen at the value it
18 happened at, but there was nothing prohibiting it
19 from receiving additional consideration; is that
20 correct?

21 **MR. THOMAS:** Just for clarification, are you
22 asking whether there's some legal prohibition on

1 its receiving?

2 MR. FOSCO: Well, she's testified that they did
3 it at the value they had to do it at. But I'm
4 confused by that and I'm asking her if she's saying
5 that they were -- when she says that, is she
6 testifying that ComEd was prohibited from receiving
7 additional consideration or is that --.

8 MR. THOMAS: Is that what she meant by the
9 statement that she made?

10 MR. FOSCO: I'm fine with that.

11 THE WITNESS: I think under GAAP we were
12 required to transfer them at their fair value, and
13 that -- I'm not sure how you could -- if you get
14 more in exchange than their fair value, you're
15 transferring them at a higher value.

16 BY MR. FOSCO:

17 Q. If you could refer to your rebuttal
18 testimony, Page 3.

19 A. I'll just clarify one thing on that too, an
20 affiliate. We couldn't have transferred them to
21 the affiliate at a higher value.

22 I'm sorry, what was that?

1 **Q.** Could you refer to Page 3 of your rebuttal
2 testimony.

3 At Page 3, Lines 58 to 61, you discuss
4 the prior Commission order that staff witness
5 Seabreeze cited in her testimony; is that correct.

6 **A.** Does -- what are you asking?

7 **Q.** Well, what I'm asking you is at Line --
8 actually, I guess it's 56. You were discussing the
9 prior Commission order that Ms. Seabreeze discussed
10 in her testimony; is that correct?

11 **A.** Yes.

12 **Q.** And would you agree that those are the
13 orders in Docket 04-0779 for Nicor Gas and in
14 Docket 93-0301 and 94-0041 consolidated for GPE?

15 **A.** I don't have the docket numbers right in
16 front of me but they were the Nicor Gas order.

17 **Q.** Did you review the record in Nicor Gas?

18 **A.** Yes.

19 **Q.** And what did you look at?

20 **A.** I looked at the testimony of various staff
21 witnesses. I looked at briefs of staff and other
22 parties, and I looked at the Commission order.

1 **Q.** Okay. Did you look at the same items for
2 the GEE?

3 MR. THOMAS: I'm sorry, could you repeat that.

4 BY MR. FOSCO:

5 **Q.** Did you look at -- well, let me ask you:
6 Did you look at the record for the -- in preparing
7 your testimony for the GEE docket, Docket
8 Nos. 93-0301, 94-0041 consolidated?

9 **A.** Other than there may have been some
10 reference to those orders in the Nicor docket, but
11 I don't know that I specifically looked at the
12 orders themselves. I can't recall.

13 **Q.** Okay. But all you can recall is that you
14 reviewed the Nicor docket in responding to
15 Ms. Seabreeze's testimony?

16 **A.** I reviewed the Nicor testimony and briefs
17 and the order in the Nicor docket.

18 **Q.** And that's all you can recall as you sit
19 here today that you did in terms of reviewing
20 orders?

21 **A.** Yes.

22 **Q.** From your reading of the record in Docket

1 04-0779, do you agree that the pension asset at
2 issue was an asset that resulted from the
3 overfunded status of the pension trust?

4 **A.** My recollection is that it resulted from
5 better than expected earnings on the trust fund
6 that had the effect of trust fund assets being in
7 excess of the obligation of the pension liability.

8 **Q.** Would you agree that the Commission made
9 specific reference in its conclusions to the
10 overfunded status of the pension trust in Docket
11 04-0779?

12 **A.** I haven't read it for a while. I don't
13 recall the specific -- whether they specifically
14 use that term.

15 **MR. FOSCO:** Your Honor, I'm going to submit a
16 document -- actually, just right now to receive --
17 to refresh the witness' recollection without
18 marking it.

19 **JUDGE DOLAN:** That's fine.

20 And for the record, I hand the witness
21 portions of the Commission's order from Docket
22 04-0779 entered on September 20, 2005. And I'd

1 like to specifically direct the witness to Page 23
2 of the middle of the page.

3 BY MR. FOSCO:

4 Q. And I guess my question is, does this
5 refresh your recollection that the Commission
6 specifically referred to the overfunded status of
7 the pension plan in Docket 04-0779?

8 A. Is there a particular paragraph?

9 Q. It's the paragraph after the indented
10 paragraph. Actually, the one I was referring to,
11 the third line down.

12 A. The sentence that says, The company
13 acknowledged that due to the overfunded status?

14 Q. Yes.

15 A. So I agree that it says that, that the
16 company acknowledged that due to the overfunded
17 status of the pension plan, it was not required to
18 contribute to the pension trust from 1997 through
19 2003.

20 Q. Okay. And haven't read that again, I guess
21 I'll ask you the question again.

22 Does that refresh your recollection that

1 the pension asset at issue in Docket 04-0779
2 resulted from the overfunded status of the pension
3 plan?

4 And if it doesn't, it doesn't.

5 A. I mean, I guess it's not -- I think here
6 they're stating two facts. One, is that the
7 pension plan was overfunded; and, two, there was a
8 pension asset.

9 Q. And would you --?

10 A. I'm not sure -- but I don't know that
11 that's why it was not included in the rate case.

12 Q. Okay. I wasn't asking about why it wasn't
13 include in the rate base.

14 A. Oh.

15 Q. Do you agree that there was not an issue
16 from your review of the Nicor record involving the
17 recording of a liability as there is in this case?

18 A. I'm sorry --.

19 Q. Let me rephrase that.

20 Do you agree that the Nicor case did not
21 present an issue similar to the one raised here in
22 terms of there was no question about Nicor not

1 having recorded on its books a liability that had
2 been recorded on its parent's books.

3 **A.** Right. I agree the circumstances are
4 different.

5 **Q.** Thank you.

6 If you could refer to Page 24 of your
7 surrebuttal testimony, Lines 540 to 542. That
8 portion of your testimony states, The effects of
9 virtual all intercompany transactions are
10 eliminated upon the consolidation of Exelon's
11 financial statement. This fact does not relieve
12 ComEd of the obligation associated with those
13 transactions.

14 **A.** Yes.

15 **Q.** What obligation did ComEd have related to
16 pension plan prior to the contribution made in
17 March of 2005?

18 **A.** ComEd has an obligation to provide funding
19 for the obligation to provide pension payments to
20 its employees.

21 **Q.** Would you agree that ComEd had an
22 obligation to fully fund the pension plan -- it has

1 an obligation to fully fund the pension plan?

2 **A.** Yes.

3 **Q.** And I believe you've already testified
4 that, correct me if I'm wrong, that after the March
5 2005 contribution, the pension plan was fully
6 funded; is that correct?

7 **A.** Yes.

8 **Q.** Would you agree then that after having made
9 that contribution -- or after that contribution was
10 made to the pension plan, the obligation to fully
11 fund was satisfied?

12 Or let me ask it a different way.

13 Did that obligation cease to exist
14 because it had been met for the March 2005
15 contribution?

16 I'm not asking a legal question, but
17 just in an accounting sense.

18 **A.** Well, just to be clear, at that point in
19 time, the assets in the trust fund were equivalent
20 to the cumulated obligation.

21 **Q.** Okay. Do you agree that in the
22 consolidation of Exelon's financial statements

1 transactions with external parties, meaning
2 non-intercompany transactions, would not be
3 eliminated?

4 **A.** I guess -- do you have a particular --.

5 **Q.** Well, if ComEd has a liability to some
6 external party, the consolidation of Exelon -- if
7 ComEd has an obligation to some party that is not
8 part of the Exelon group, the consolidations of
9 Exelon's -- the consolidation of all the
10 subsidiaries in Exelon's balance sheets would have
11 no impact on that particular liability; is that
12 correct?

13 **A.** If that transaction would not be eliminated
14 in the consolidation process? Is that your
15 question?

16 **Q.** Yes.

17 **A.** That's correct.

18 **Q.** Do you agree that the contribution to the
19 pension trust was a transaction with an external
20 party not part of the Exelon group?

21 **A.** The contribution was contributed to an
22 external trust fund.

1 **Q.** Okay.

2 **A.** That's correct.

3 **Q.** And you agree -- I think you might have
4 already covered this -- that Exelon does not show a
5 pension asset on its consolidated financial
6 statements after March 2005; is that correct?

7 **A.** That's correct.

8 Well, for all practical purposes, I
9 can't recall if it had a very small pension asset
10 liability.

11 **Q.** And you may have already covered this, but
12 the reason it's not disclosed on the consolidate
13 statement is that it was eliminated as part of the
14 consolidation process?

15 Pension asset, that is.

16 **A.** Well, ComEd's pension asset is offset. I
17 don't know that it's necessarily eliminated, but it
18 was combined with an offset by a liability that was
19 recorded at Exelon.

20 **Q.** I just have a few more questions. I think
21 we're okay.

22 Would you agree that a utility is not

1 entitled to recover its actual test year costs if
2 those costs are determined not to be just and
3 reasonable?

4 And I guess I am switching topics.

5 **A.** Well, that's -- that can be a determination
6 in the rate proceeding that if the cost is not
7 found to be just and reasonable, it is disallowed.

8 **Q.** And even if that's its actual cost; is that
9 correct?

10 Even if its a utilities' actual cost, if
11 it's found not to be just and reasonable then the
12 utility does not recover that rate; is that
13 correct?

14 **A.** If that can happen, yeah.

15 I guess put it the other way. I would
16 say the utility should be allowed to recover its
17 just -- those costs that are just and reasonable.

18 **Q.** Okay. And I guess my point, I think you
19 would agree then based on what I believe you just
20 testified to, that it's not your position that
21 ComEd should be able to recover its actual cost
22 even if those costs are found not to be just and

1 reasonable?

2 **A.** Well, I think the way you phrase it is, if
3 ComEd believes that all -- it makes a determination
4 before it submits cost for recovery are included in
5 the test year, that they are just and reasonable.

6 **Q.** But that wasn't my question. My question
7 is, assuming the Commission finds that ComEd's
8 requested corporate governance cost not to be just
9 and reasonable, then it wouldn't -- it should not
10 be included in ComEd's revenue requirement
11 notwithstanding that it's the actual amount of
12 cost; is that correct?

13 **A.** Well, I would not agree that they are not
14 just and reasonable.

15 **Q.** But that wasn't part of the question.

16 I asked you to assume hypothetically
17 that the Commission finds that.

18 **A.** So are you asking me if they have a -- --.

19 **Q.** If they --?

20 **A.** -- legal basis? If the Commission has the
21 legal authority to disallow --.

22 **Q.** No. That's a factual finding.

1 If the Commission finds that ComEd's
2 corporate governance costs are not just and
3 reasonable, then if they made that finding, would
4 you agree that under traditional ratemaking
5 principles they should not be included in the
6 ComEd's revenue requirement even though they're the
7 actual costs?

8 **A.** Not --.

9 MR. THOMAS: I object --.

10 THE WITNESS: -- not necessarily.

11 BY MR. FOSCO:

12 **Q.** Can you explain what you mean by not
13 necessarily?

14 **A.** Well, I think if it was a cost that ComEd
15 believed was just and reasonable and the Commission
16 found that they were not just and reasonable, we
17 would disagree with that.

18 MR. FOSCO: Your Honor, I'm presenting a
19 hypothetical. We're going to -- if the witness is
20 going to fight with a hypothetical, we'll be here
21 for a lot longer.

22 MR. THOMAS: Well, excuse me, but he's actually

1 asking for a legal conclusion. I mean, there's no
2 issue what the legal rights of the Commission are
3 or are not. And you're asking a non-lawyer.

4 MR. FOSCO: That's not true, your Honor. This
5 witness testified that there's a test year
6 violation. I'm trying to probe the extent into
7 which her testimony runs, and I think her testimony
8 is inaccurate because -- just because something is
9 not the actual cost, does not mean that they're
10 entitled to recovery. And that's essentially what
11 this witness testified to and I think I'm entitled
12 to probe that.

13 MR. THOMAS: Well, except what you've just
14 stated was you're disagreeing with her testimony
15 about the testing. Why don't you ask her about the
16 test year. You didn't ask her about the test year.

17 MR. FOSCO: Well, I will phrase my own questions
18 the way I see fit and I think my questions are
19 proper.

20 MR. THOMAS: Well, she can't very well be
21 expected to respond to the question about the test
22 year when you don't even mention the word test

1 year.

2 JUDGE DOLAN: To be honest with you, I was a
3 little confused with that question myself. So I
4 think if you can maybe rephrase it or break it
5 down, I think it might help. You're kind of
6 throwing a couple -- it kind of sounded like a
7 compound to me.

8 MR. FOSCO: Let me rephrase it then.

9 BY MR. FOSCO:

10 Q. It's your testimony that Ms. Hathorn's
11 recommendation is inconsistent with test years
12 principles; correct?

13 A. Correct.

14 Q. And your basis for that is that
15 Ms. Hathorn's recommended numbers would not be, in
16 according to your testimony, the actual cost that
17 ComEd incurred; is that correct?

18 A. That is correct.

19 Q. It is not your testimony, is it, that the
20 Commission would be violating test year principles
21 if it found ComEd's proposed amount of corporate
22 governance cost to not be just and reasonable; is

1 that correct?

2 **A.** I'm not sure that it's a test year
3 principle issue. I want to be clear that I don't
4 include necessarily that if the Commission found
5 the costs to be not just and reasonable that I
6 would agree with that finding.

7 **Q.** Let me put it another way.

8 Your testimony has nothing to do with --
9 in that we just discussed in terms of test year
10 principles with the -- whether or not those costs
11 are just and reasonable.

12 **A.** Well, I think Ms. Hathorn recommended no
13 change to the way that we record and to the way
14 that BSC allocates those costs.

15 So, you know, if she wasn't finding
16 fault with them or indicating in any way that they
17 were not just and reasonable, I don't believe they
18 should be disallowed.

19 **Q.** Would you agree that the Commission
20 sometimes approves expenses based on an average
21 amount of cost rather than amounts actually
22 charged?

1 **A.** In certain circumstances that would happen.

2 **Q.** And in those circumstances, that does not
3 violate test year principles; is that correct?

4 **A.** If the end result is that the average
5 results in an amount that is representative of
6 costs which are expected to be in effect when the
7 rates are in effect.

8 **Q.** Are the corporate governance costs
9 controlled by the GSA?

10 **A.** Yeah.

11 **Q.** You were asked some questions earlier about
12 portions of your testimony indicating it was
13 ComEd's policy to develop the allocator based upon
14 projections. Do you recall that?

15 **A.** BSC's policy, yes.

16 **Q.** So that BSC's policy, not ComEd's?

17 **A.** That's BSC practice. BSC develops the
18 allocation practices.

19 **Q.** And the fact that you said it's a policy,
20 does that mean it's not specifically set forth in
21 the GSA?

22 **A.** I don't believe the GSA specifically

1 addresses at what values should be used for the
2 inputs. I don't believe it's that specific.

3 Q. And I believe you also testified that --
4 and I guess it was GSA reviews -- well, let me --
5 maybe I don't recall now. Was it GSA or ComEd that
6 reviews the allocation factors on an annual basis?

7 A. BSC or ComEd?

8 Q. (Nodding head up and down).

9 A. I would say both.

10 Q. And is it your testimony that adjustments
11 are not made on a hindsight basis unless they're
12 material?

13 A. Correct.

14 Q. Okay. And is it your position that
15 Ms. Hathorn's proposed adjustment is not material?

16 A. Relative to the overall level that BSC
17 costs --.

18 Q. Is it not material in the context that you
19 used it in describing the annual review process?

20 A. Yeah, it was not determined to be material
21 enough to go back and do it after the fact,
22 revision to the allocation factors.

1 **Q.** Okay. And so from that I take it then that
2 both ComEd and GSA new before ComEd -- let me
3 strike that.

4 ComEd had looked at the actual -- looked
5 at the allocation factors that have resulted based
6 on the actual data before it filed its rate case.

7 **A.** They do a general comparison at some level
8 of actual versus budget input.

9 **Q.** And when we talk about the budget or
10 forecasted inputs, would you agree that goal of
11 those projections is to match as best as can be
12 what will turn out to be the actuals?

13 **A.** Yes.

14 **Q.** Do you agree that the Commission's approval
15 of the GSA is not any specific approval for the
16 ratemaking treatment of the actual expenses?

17 **A.** Are they synonymous? No.

18 But I believe that approval of the GSA
19 indicates to ComEd that we think that they're --
20 it's reasonable basis on which to -- the cost to be
21 incurred.

22 **Q.** It's not your testimony that there was

1 something in the Commission's approval that the
2 GSA -- that mandated a specific treatment; is that
3 correct?

4 MR. THOMAS: Just so the record is clear,
5 specific treatment as to what?

6 MR. FOSCO: A specific ratemaking treatment of
7 the expenses incurred pursuant to the GSA.

8 THE WITNESS: Well, you know, assuming that
9 ComEd believes that it should receive recovery of
10 cost that are just and reasonable, if costs are
11 allocated, I'm not sure that that approved as part
12 of the GSA. Our expectation would be that the
13 Commission would not approve allocation factors or
14 a GSA that results in costs that they would think
15 to be not just and reasonable.

16 I guess to put it a different way, I
17 think, you know, we would not expect the Commission
18 to approve a GSA, then later determine the costs
19 that are allocated are not just and reasonable.

20 BY MR. FOSCO:

21 Q. And you testified earlier that the GSA does
22 not mandate use of specific data in calculating the

1 allocation factors; is that correct?

2 **A.** It's not that granular as to whether you
3 use budgeted or actual input.

4 **Q.** Putting aside your concerns about the
5 timing of when actual data becomes available, would
6 you agree that costs developed using actual data
7 are just and reasonable?

8 MR. THOMAS: Are you referring, again, to costs
9 under the GSA?

10 MR. FOSCO: The corporate governance cost in
11 particular.

12 THE WITNESS: I mean, if costs would have been
13 billed based on actual inputs would I think that
14 they're just and reasonable?

15 BY MR. FOSCO:

16 **Q.** Well, let me put it another way. You
17 testified that the goal of the estimate is to match
18 what turn out to be in the future the actual costs;
19 is that correct?

20 That's what you testified earlier, I
21 believe.

22 **A.** Now, just to clarify, I think what I

1 testified to earlier was that what we've included
2 in the test year are the actual costs that were
3 billed to ComEd.

4 Q. Right.

5 A. Which we believe are just and reasonable.

6 Q. But I had asked you a question early about
7 the development of alligators and the use of
8 projected data and you agreed that one of the goals
9 in projecting the data was to come up with a
10 forecast that's accurate as can be at to the
11 actual --?

12 A. Yes.

13 Q. My big catch here, my smoking gun: Could
14 you refer to Page 21 of your rebuttal testimony. I
15 just want to make sure I'm not missing something,
16 but you refer on Line 562 to your direct testimony.

17 A. The rebuttal?

18 Q. Yes.

19 JUDGE DOLAN: Just for the record, she didn't
20 file any direct.

21 MR. FOSCO: Well, that's my question. That's
22 why I want to make sure I didn't miss something.

1 THE WITNESS: Rebuttal?

2 BY MR. FOSCO:

3 Q. Well, you refer in your rebuttal to, quote,
4 in my direct testimony; is that correct?

5 On Line 562.

6 A. Oh.

7 Q. I just want to be clear, you have no direct
8 testimony?

9 A. No. You're right. I believe that should
10 be referenced to Mr. Mitchell's direct testimony.

11 JUDGE DOLAN: Okay.

12 MR. THOMAS: We will correct that as well with
13 the other correction and include it in the revised
14 e-docket version.

15 MR. FOSCO: Your Honor, I have no further
16 questions.

17 JUDGE DOLAN: Okay.

18 (Whereupon, a discussion
19 was had off the record.)

20 JUDGE DOLAN: All right. We'll call it a day
21 and we'll reconvene tomorrow at 9:00 a.m.

22 MR. NICKERSON: Excuse me, your Honors. Just a

1 matter of housekeeping. On cross-examination
2 there's CUB Data Response 7.04. We'd like t move
3 that for admission into evidence.

4 JUDGE DOLAN: Okay. Yeah, that did not get
5 admitted into the record.

6 MR. THOMAS: CUB Cross Exhibit 1?

7 Yeah, we have no objection.

8 MR. NICKERSON: Thank you very much.

9 JUDGE DOLAN: All right. Thank you.

10 It will be entered.

11 (Whereupon, CUB Cross
12 Exhibit No. 7.04 was admitted
13 into evidence.)

14 JUDGE DOLAN: And continued to tomorrow at
15 9:00 a.m.

16 (Whereupon, further proceedings
17 in the above-entitled matter
18 were continued to March 22,
19 2006, at 9:00 a.m.)

20

21

22